

VOLUME 1

FILED

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MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO
TRIAL COURT CASE NO. 01-CR-794
SUPREME COURT OF OHIO CASE NO. 03-137

STATE OF OHIO)
)
Plaintiff) SEARCH WARRANT
) INITIAL APPEARANCE
-vs-) MOTION TO INTERVENE
) ARRAIGNMENT
NATHANIEL JACKSON) TIME WAIVER
) MOTIONS
Defendant) MOTIONS TO SUPPRESS

BE IT REMEMBERED, that on December 20, 2001,
December 21, 2001, December 31, 2001, January 23,
2002, March 20, 2002, and April 17, 2002, these
proceedings came on to be heard before one of
the Judges of this Court, John M. Stuard, in
Courtroom No. 2, on High Street, Warren, Ohio,
before the case heretofore filed herein.

Mary Ann Mills, RPR
Official Court Reporter
Trumbull County, Ohio

A P P E A R A N C E S

On Behalf of the State of Ohio:
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Warren, OH 44481

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State of Ohio Public Defendant's Office
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Warren, OH 44481

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	(SEE SEPARATE VOLUME FOR TRANSCRIPT OF MITIGATION HEARING)	

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Exhibit No.	Description	Admitted
1	911 Tape	Admitted over Obj
1A	911 Paper work	No Objection
2	Crime Scene Video	Objection Sustained
3	Crime Scene Diagram	Admitted over Obj
4	Photo	No Objection
5	Photo	No Objection
6	Photo	Withdrawn
7	Photo	No Objection
8	Photo	No Objection
9	Photo	No Objection
10	Photo	No Objection
11	Photo	No Objection
12	Photo	No Objection
13	Photo	No Objection
14	Photo	No Objection
15	Photo	No Objection
16	Photo	No Objection
17	Photo	No Objection
18	Photo	No Objection
19	Photo	No Objection
20	Photo	No Objection
21	Photo	No Objection
22	Photo	Withdrawn
23	Photo	Withdrawn
24	Photo	No Objection
25	Photo	No Objection
26	Photo	No Objection
27	Photo	No Objection
28	Photo	No Objection
29	Photo	Withdrawn
30	Photo	Withdrawn
31	Photo	No Objection
32	Photo	Withdrawn
33	Photo	No Objection
34	Photo	No Objection
35	Photo	Withdrawn
36	Photo	Withdrawn
37	Photo	No Objection
38	Photo	No Objection
39	Photo	Withdrawn
40	Photo	No Objection
41	Photo	Withdrawn
42	Photo	Withdrawn
43	Photo	No Objection
44	Photo	No Objection
45	Photo	Withdrawn
46	Photo	Withdrawn
47	Photo	No Objection
48	Photo	No Objection
49	Photo	No Objection
50	Photo	Withdrawn
51	Photo	No Objection
52	Photo	No Objection
53	Photo	No Objection
54	Photo	No Objection
55	Photo	No Objection
56	Photo	No Objection
57	Photo	No Objection
58	Photo	No Objection
59	Photo	No Objection
60	Photo	No Objection

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61	Photo Shirt	No Objection
62	Photo Shirt	No Objection
63	Photo - Victim	Withdrawn
64	Bullet Recovered from Brain of Victim	No Objection
65	Bullet Recovered from Brain of Victim	No Objection
66	Clothes and Jewelry	No Objection
67	Photo X-Ray	No Objection
68	Photo Reds Jacket	No Objection
69	Tire Marks in Grass	No Objection
70	N. Side Exterior of House	No Objection
71	Front Exterior of House	No Objection
72	Rear Exterior of House	No Objection
73	S Side Exterior of House	No Objection
74	Main Bathroom	No Objection
75	View of man door screen from house	No Objection
76	View of man door screen from garage	No Objection
77	Spare Bedroom	No Objection
78	Clothing- Spare Bedroom	No Objection
79	Blood spatter - peninsula	Withdrawn
80	Blood Spatters- on wall by door	Withdrawn
81	Blood Spatters and smear	Withdrawn
82	Blood Spatters	Withdrawn
83	Inside Garage looking into residence	No Objection
84	Blood drops - garage	No Objection
85	Garage	Withdrawn
86	Blood Spatters - garage	No Objection
87	Overview garage	No Objection
88	Peninsula & Wall - blood splatters	Withdrawn
89	Different view as in 88	Withdrawn
90	Blood Drops in garage	No Objection
91	Kitchen door closed	No Objection
92	Overview garage	No Objection
93	Back of man door w/ blood	No Objection
94	Interior side of man door	No Objection
95	Eye glasses and broken lag bolt -garage	No Objection
96	Eye glasses - garage	No Objection
97	Stairwell ceiling	No Objection
98	receipt dated 9-26-01	No Objection
99	Victim	Withdrawn
100	Victim -back close up	Withdrawn
101	Small key found under victim	No Objection
102	overview bedroom	No Objection
103	bedroom master	No Objection
104	bedroom closet	No Objection
105	Photo	No Objection
105A	Photo	No Objection
106	Photo	No Objection
106A	Photo	No Objection
107	Photo	No Objection
107A	photo	Withdrawn
108	Victim	No Objection
108A	Victim Face down	Withdrawn
109	Dry Wall Hole	Withdrawn
109A	Victim face down	Withdrawn
110	Victim in Kitchen	No Objection
111	Victim lower torso	Withdrawn
112	Victim - Footprints w/ small dots	Withdrawn
113	Ashtray	No Objection
114	Ashtray	No Objection
115	Living Room	No Objection
116	Living Room	No Objection
117	Living Room	No Objection

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118	Office Area	No Objection
119	Office Area	No Objection
120	Office Area	No Objection
121	Office Area	No Objection
122	Front Door Looking In	No Objection
123	Dining Room - Orioles Jacket	No Objection
124	Office Area w/ ball cap	No Objection
125	Dry Wall Hole	No Objection
126	Front View of Car	No Objection
127	left rear red car	No Objection
128	left view red car	No Objection
129	Garage door & Driver door	No Objection
130	Family Room - overview	No Objection
131	Table w/ 2 roaches	No Objection
132	Garage w/ view of Gun	No Objection
133	Blood Drops in garage	Withdrawn
134	Overview - Office	No Objection
135	Kitchen - Door	Withdrawn
136	Open Door, Kitchen area	Withdrawn
137	Kitchen - receipt Walmart 9:33 p.m.	No Objection
138	Stainless Steel Revolver	No Objection
139	Close - up Footprint & Garage	No Objection
140	Stairwell & Basement	No Objection
141	Stairwell & Basement	No Objection
142	Cabinet	No Objection
143	Close - Up Cabinet	No Objection
144	Kitchen - Different View	No Objection
145	Pier One Import Bag w/ wine glasses	No Objection
146	Front View of Car	No Objection
147	Rt Side View of Car	No Objection
148	Rear view of Car	No Objection
149	Left Side view of Car	No Objection
150	Double Lined Bag "Nate Jackson"	No Objection
151	Receipt - Pier One Import - Lorain Rd	No Objection
152	Assorted Candy, toothpaste	No Objection
153	Customer Receipt	No Objection
154	Handcuff Box w/ key - no cuffs	No Objection
155	Hair Comb	No Objection
156	Front View of Car	No Objection
157	Rear view of Car	No Objection
158	Wide Angle Rear of Car	Withdrawn
159	Rt Side View of Car	No Objection
160	Front View of Car - Left Corner	No Objection
161	Rear view of Car - Damage to Bumper	Withdrawn
162	Front View of Car	No Objection
163	Exterior to Interior - Blood Smears	No Objection
164	Visor Area	No Objection
165	Interior area above head w/ blood	No Objection
166	Exterior	No Objection
167	Front Driver Seat	Withdrawn
168	Visor Area - Removed	No Objection
169	Door Handle	No Objection
170	Door Handle w/ blood	No Objection
171	Driver side visor clamp	No Objection
172	Front Passenger Seat - Cell Phone	No Objection
173	Front Passenger Seat - Cell Phone	No Objection
174	Interior -Left Console	No Objection
175	Napkin w/ Blood Smear	No Objection
176	Floormat	Withdrawn
177	Trunk Open	No Objection
178	Keys in Ignition	No Objection
179	Rt interior head rest	Withdrawn

180	Driver Side Console	No Objection
181	Passenger Side Dashboard	No Objection
182	Passenger side door - interior	No Objection
183	Driver side - steering wheel p garage door opener	No Objection
184	Left side of car w/ dashboard	No Objection
185	Rt side back seat	No Objection
186	Front driver compartment	No Objection
187	Exterior thru rear left door	No Objection
188	keys	Withdrawn
189	Cell Phone	Withdrawn
190	Keys - Blue Matt	Withdrawn
191	Driver side - release button	No Objection
192	Wagon Wheel Photo	Objection Sustained
193	Wagon Wheel Photo	Objection Sustained
194	Wagon Wheel Photo	Admitted over Obj
195	Wagon Wheel Photo	Admitted over Obj
196	Wagon Wheel Photo	Objection Sustained
197	Photograph Items Recovered Days Inn	Admitted over Obj
198	No Exhibit	
199	Days Innn Photographs	Withdrawn
200	Days Innn Photographs	Withdrawn
201	Days Innn Photographs	Admitted over Obj
202	Days Innn Photographs	Objection Sustained
203	Days Innn Photographs	Withdrawn
204	Days Innn Photographs	Objection Sustained
205	Days Innn Photographs	Withdrawn
206	Days Innn Photographs	Withdrawn
207	Days Innn Photographs	Withdrawn
208	Days Innn Photographs	Withdrawn
208	Days Innn Photographs	Withdrawn
210	Days Innn Photographs	Withdrawn
211	Days Innn Photographs	Withdrawn
212	Days Innn Photographs	Withdrawn
213	Days Innn Photographs	Withdrawn
214	Days Innn Photographs	Withdrawn
215	Days Innn Photographs	Withdrawn
216	Days Innn Photographs	Withdrawn
217	Days Innn Photographs	Withdrawn
218	Days Innn Photographs	Withdrawn
219	Days Innn Photographs	Withdrawn
220	Days Innn Photographs	Withdrawn
221	Days Innn Photographs	Withdrawn
222	Days Innn Photographs	Withdrawn
223	Days Innn Photographs	Withdrawn
224	Days Innn Photographs	Admitted over Obj
225	Days Innn Photographs	Withdrawn
226	Days Innn Photographs	Admitted over Obj
227	Photographs of Wirt Street	Admitted over Obj
228	Photographs of Wirt Street	Out
229	Photographs of Wirt Street	Out
230	Photographs of Wirt Street	Admitted over Obj
231	Photographs of Wirt Street	Admitted over Obj
232	Photographs of Wirt Street	Out
233	Wirt Street Photographs	Out
234	Wirt Street Photographs	Admitted over Obj
235	Front view - Nate Jackson	No Objection
236	Rear view Nate Jackson	No Objection
237	Full body shot	No Objection
238	Rt arm and Hand	No Objection
239	Front view - Nate Jackson	No Objection
240	Left & Rt knee	No Objection
241	View of Hands & Wound	No Objection

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271D	Letters From Donna to Nate		
271D1		12/03/01	Admitted
271D2		11/29/01	Admitted
271D3		11/29/01	Admitted
271D4		11/28/01	Admitted
271D5		11/28/01	Admitted
271D6		11/27/01	Admitted
271D7		11/27/01	Admitted
271D8		11/26/01	Admitted
271D9		11/26/01	Admitted
271D10		11/24/01	Admitted
271D11		11/23/01	Admitted
271D12		11/23/01	Admitted
271D13		11/22/01	Admitted
271D14		11/22/01	Admitted
271D15		11/22/01	Admitted
271D16		11/22/01	Admitted
271D17		11/21/01	Admitted
271D18		11/21/01	Admitted
271D19		11/20/01	Admitted
271D20		11/20/01	Admitted
271D21		11/20/01	Admitted
271D22		11/20/01	Admitted
271D23		11/19/01	Admitted
271D24		11/19/01	Admitted
271D25		11/19/01	Admitted
271D26	Empty		Admitted
271D27		11/16/01	Admitted
271D28		11/16/01	Admitted
271D29		11/15/01	Admitted
271D30	Empty		Admitted
271D31		11/12/01	Admitted
271D32		11/10/01	Admitted
271D33		11/10/01	Admitted
271D34		11/10/01	Admitted
271D35		11/10/01	Admitted
271D36		11/09/01	Admitted
271D37		11/09/01	Admitted
271D38		11/09/01	Admitted
271D39		11/09/01	Admitted
271D40		11/08/01	Admitted
271D41		11/08/01	Admitted
271D42		11/08/01	Admitted
271D43		11/07/01	Admitted
271D44		11/07/01	Admitted
271D45		11/07/01	Admitted
271D46		11/07/01	Admitted
271D47	Empty		Admitted
271D48		11/06/01	Admitted
271D49		11/06/01	Admitted
271D50	Empty		Admitted
271D51		11/05/01	Admitted
271D52		11/05/01	Admitted
271D53		11/03/01	Admitted
271D54		11/03/01	Admitted
271D55		11/02/01	Admitted
271D56		11/02/01	Admitted
271D57		11/02/01	Admitted
271D58		11/01/01	Admitted
271D59		11/01/01	Admitted
271D60	Halloween card		Admitted
271D61		10/31/01	Admitted

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271D62		10/30/01	Admitted
271D63		10/29/01	Admitted
271D64		10/29/01	Admitted
271D65		10/28/01	Admitted
271D66		10/27/01	Admitted
271D67		10/26/01	Admitted
271D68		10/26/01	Admitted
271D69		10/26/01	Admitted
271D70		10/25/01	Admitted
271D71		10/25/01	Admitted
271D72		10/24/01	Admitted
271D73		10/24/01	Admitted
271D74		10/23/01	Admitted
271D75		10/23/01	Admitted
271D76		10/23/01	Admitted
271D77		10/23/01	Admitted
271D78		10/22/01	Admitted
271D79	Empty		Admitted
271D80		10/21/01	Admitted
271D81		10/20/01	Admitted
271D82		10/20/01	Admitted
271D83		10/20/01	Admitted
271D84		10/20/01	Admitted
271D85		10/19/01	Admitted
271D86		10/19/01	Admitted
271D87		10/19/01	Admitted
271D88		10/19/01	Admitted
271D89		10/18/01	Admitted
271D90	Empty		Admitted
271D91		10/18/01	Admitted
271D92		10/17/01	Admitted
271D93		10/16/01	Admitted
271D94		10/16/01	Admitted
271D95		10/15/01	Admitted
271D96		10/15/01	Admitted
271D97		10/15/01	Admitted
271D98		10/13/01	Admitted
271D99		10/13/01	Admitted
271D100		10/13/01	Admitted
271D101		10/12/01	Admitted
271D102		10/12/01	Admitted
271D103		10/12/01	Admitted
271D104	Empty		Admitted
271D105		10/12/01	Admitted
271D106		10/12/01	Admitted
271D107		10/11/01	Admitted
271D108		10/11/01	Admitted
271D109		10/11/01	Admitted
271D110		10/10/01	Admitted
271D111		10/10/01	Admitted
271D112		10/10/01	Admitted
271D113		10/08/01	Admitted
271D114		10/08/01	Admitted
271D115		10/06/01	Admitted
271D116		10/06/01	Admitted
271D117		10/06/01	Admitted
271D118		10/05/01	Admitted
271D119		10/05/01	Admitted
271D120		10/05/01	Admitted
271D121		10/05/01	Admitted
271D122		10/05/01	Admitted
271D123		10/05/01	Admitted

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271D124		10/05/01	Admitted
271D125		10/04/01	Admitted
271D126		10/04/01	Admitted
271D127		10/02/01	Admitted
271D128		10/02/01	Admitted
271D129		10/02/01	Admitted
271D130	Unknown		Admitted
271D131	Unknown		Admitted
271D132	Unknown		Admitted
271D133	Unknown		Admitted
271D134	Unknown		Admitted
271D135	Unknown		Admitted
271D136	Unknown		Admitted
271D137	Unknown		Admitted
271D138	Unknown		Admitted
271D139		11/26/01	Admitted

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273N	Letters from Nate to Donna	Admitted
273N1	12/01/01	Admitted
273N2	11/30/01	Admitted
273N3	11/29/01	Admitted
273N4	11/28/01	Admitted
273N5	11/27/01	Admitted
273N6	11/26/01	Admitted
273N7	11/25/01	Admitted
273N8	11/23/01	Admitted
273N9	11/22/01	Admitted
273N10	11/20/01	Admitted
273N11	11/19/01	Admitted
273N12	11/17/01	Admitted
273N13	11/16/01	Admitted
273N14	11/14/01	Admitted
273N15	11/14/01	Admitted
273N16	11/13/01	Admitted
273N17	11/12/01	Admitted
273N18	11/12/01	Admitted
273N19	11/10/01	Admitted
273N20	11/09/01	Admitted
273N21	11/07/01	Admitted
273N22	11/06/01	Admitted
273N23	11/08/01	Admitted
273N24	11/05/01	Admitted
273N25	11/03/01	Admitted
273N26	11/01/01	Admitted
273N27	11/01/01	Admitted
273N28	10/31/01	Admitted
273N29	10/30/01	Admitted
273N30	273N31	273N32
273N31	10/28/01	Admitted
273N32	10/27/01	Admitted
273N33	273N34	273N35
273N34	10/25/01	Admitted
273N35	10/25/01	Admitted
273N36	10/25/01	Admitted
273N37	10/24/01	Admitted
273N38	10/23/01	Admitted
273N39	10/22/01	Admitted
273N40	10/21/01	Admitted
273N41	10/21/01	Admitted
273N42	10/20/01	Admitted
273N43	10/19/01	Admitted
273N44	10/18/01	Admitted
273N45	10/17/01	Admitted
273N46	10/16/01	Admitted
273N47	10/16/01	Admitted
273N48	10/15/01	Admitted
273N49	10/14/01	Admitted
273N50	10/12/01	Admitted
273N51	10/10/01	Admitted
273N52	10/10/01	Admitted
273N53	10/08/01	Admitted
273N54	10/05/01	Admitted
273N55	10/07/01	Admitted
273N56	10/04/01	Admitted
273N57	10/04/01	Admitted
273N58	10/02/01	Admitted
273N59	10/01/01	Admitted
273N60	10/01/01	Admitted
273N61	09/30/01	Admitted

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273N62		09/27/01	Admitted
273N63		09/27/01	Admitted
273N64		07/12/01	Admitted
273N65		06/28/01	Admitted
273N66		06/09/01	Admitted
273N67		05/18/01	Admitted
273N68		05/15/01	Admitted
273N69		05/12/01	Admitted
273N70		05/10/01	Admitted
273N71		05/09/01	Admitted
273N72		05/06/01	Admitted
273N73		05/04/01	Admitted
273N74		05/03/01	Admitted
273N75		04/28/01	Admitted
273N76		02/24/01	Admitted
273N77		04/23/01	Admitted
273N78		04/22/01	Admitted
273N79		04/19/01	Admitted
273N80		04/16/01	Admitted
273N81		04/16/01	Admitted
273N82		04/15/01	Admitted
273N83		04/11/02	Admitted
273N84		04/10/01	Admitted
273N85		04/10/01	Admitted
273N86		04/09/01	Admitted
273N87		04/08/01	Admitted
273N88		04/04/01	Admitted
273N89		04/02/01	Admitted
273N90	Unknown		Admitted
273N91		03/31/01	Admitted
273N92		03/29/01	Admitted
273N93		03/26/01	Admitted
273N94		03/25/01	Admitted
273N95		03/23/01	Admitted
273N96		03/22/01	Admitted
273N97		03/20/01	Admitted
273N98		03/20/01	Admitted
273N99		03/20/01	Admitted
273N100		03/19/01	Admitted
273N101		03/19/01	Admitted
273N102		03/19/01	Admitted
273N103		03/19/01	Admitted
273N104		03/15/01	Admitted
273N105		03/13/01	Admitted
273N106		03/12/01	Admitted
273N107		03/11/01	Admitted
273N108		03/09/01	Admitted
273N109		03/06/01	Admitted
273N110		03/04/01	Admitted
273N111		03/03/01	Admitted
273N112		03/02/01	Admitted
273N113		02/27/01	Admitted
273N114		02/25/01	Admitted
273N115		02/20/01	Admitted
273N116		02/23/01	Admitted
273N117		02/22/01	Admitted
273N118		02/19/01	Admitted
273N119		02/16/01	Admitted
273N120		02/15/01	Admitted
273N121	Unknown		Admitted
273N122		02/13/01	Admitted
273N123		02/12/01	Admitted

273N124	02/09/01	Admitted
273N125	02/07/01	Admitted
273N126	02/04/01	Admitted
273N127	02/01/01	Admitted
273N128	02/01/01	Admitted
273N129	01/26/01	Admitted
273N130	01/19/01	Admitted
273N131	01/17/01	Admitted
273N132	01/21/01	Admitted
273N133	01/16/01	Admitted
273N134	01/12/01	Admitted
273N135	01/05/01	Admitted
273N136	01/01/01	Admitted
273N137	12/27/00	Admitted
273N138	12/27/00	Admitted
273N139	Unknown	Admitted
273N140	12/11/00	Admitted
273N141	Unknown	Admitted
273N142	Unknown	Admitted
273N143	05/01/01	Admitted

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242	Left Hand - Wound	No Objection
243	Front view w/ bandage	No Objection
244	Side view Finger	No Objection
245	Left Hand - wrist to finger tip	No Objection
246	Left Hand Palm up	No Objection
247	Back side of Hand	No Objection
248	Both Hands	No Objection
249	Head and Shoulders	Admitted over Obj
250	Full body shot	Objection Sustained
251	Handgun - .38 Taurus	No Objection
252	Five (5) Live Rounds from Taurus	No Objection
252A	Envelope Containing Test Fire Rounds	No Objection
253	Right Eye glass Lens	No Objection
254	Eye glasses Missing Right Lens	No Objection
255	Cotton Swab - Front Door Hallway	No Objection
256	Dry Wall Cut out w/ Bullet Hole	No Objection
257	Bullet Recovered from Dry Wall	No Objection
258	Cincinnati Red's Jacket - From Victim	No Objection
259	Bullet Recovered from Clothing of Victim	No Objection
260	Death Certificate	No Objection
261	Coroner's Verdict	No Objection
262	Autopsy Protocol - 11 pages	No Objection
263	Microscopic Examination	No Objection
264	Toxicology - 1 page Front and Back	No Objection
264A	Radiology Report	No Objection
265	Blood - Drawn from Robert Flingerhut	No Objection
266	Bullet Recovered from Brain of Victim	No Objection
267	Driver's Side Visor	No Objection
268	Visor Clamp	No Objection
269	Keys Recovered from Ignition	No Objection
270	Bag Containing Letters	No Objection
271	Letters from Donna to Nate (See attached)	No Objection
272	No Exhibit	
273	Letters from Nate to Donna (See Attached)	No Objection
274	No Exhibit	
275A	Hand Writing Analysis	Admitted over Obj
275B	Hand Writing Analysis	Admitted over Obj
276A	Hand Writing Standard	No Objection
276B	Hand Writing Standard	No Objection
276b1	CCA Records	No Objection
276B2	CCA Records	No Objection
276B3	CCA Records	No Objection
276B4	CCA Records	No Objection
276B5	CCA Records	No Objection
276B6	CCA Records	No Objection
276B7	CCA Records	No Objection
276C	Hand Writing Standard	No Objection
276C1	Prison Records	No Objection
276C2	Prison Records	No Objection
276C3	Prison Records	No Objection
276C4	Prison Records	No Objection
277	01-35755- Two (2) pages	No Objection
278	01-35755-A	No Objection
279	01-35755-B	No Objection
280	01-35755-C	No Objection
281	01-35755-D	Admitted over Obj
282A	01-35755 - Mike Roberts (2) Pages	No Objection
282B		Not Introduced
282C	01-35755 - Mike Roberts Supplemental	No Objection
283	01-35755 - Cindy Maylee (2) Pages	No Objection
284	Dale Laux - (2) Pages	No Objection
285	Steve Green (1) Page	Admitted over Obj

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286A	Brenda Gerardi (3) Pages	No Objection
286B		Not Introduced
286C	Brenda Gerardi Supplemental 1 Corrected (2) Pages	No Objection
286D	Brenda Gerardi Supplemental 2 - (3) Pages	No Objection
287	Plastic Bag With Three (3) Boxes of Swabs	Withdrawn
287A	Box Containing Blood Swab - Days Inn	Withdrawn
287B	Box Containing Blood Swab - Days Inn	Withdrawn
287C	Box Containing Blood Stain - Days Inn	Withdrawn
288	Wash Cloth - Days Inn - Days Inn	Withdrawn
289	Hand Towel - Days Inn	Withdrawn
290	Tape Lifts - Hairs Toilet	Withdrawn
291	Finger Print Cards - Jennifer Robinson	Withdrawn
292	White Stain Napkins from Dumpster	Withdrawn
293	Dish Cloth - From Dumpster	Withdrawn
294	Dressing from Dumpster	No Objection
295	Dressing from Dumpster	Withdrawn
296	Dressing and Tape from Dumpster	Withdrawn
297	White Stain Napkins	Withdrawn
298	Stained White Wash Cloth	Withdrawn
299	One (1) Condom	Withdrawn
300	One (1) Condom	Withdrawn
301	Hydrogen Peroxide Bottle	Withdrawn
302	Empty Package for Bandage	Withdrawn
303	Empty First Aid Tape Box	Withdrawn
304	Empty Bandage Roll	Withdrawn
305	Empty First Aid Sponge Package	Withdrawn
306	Empty First Aid Sponge Package	Withdrawn
307	Empty First Aid Sponge Package	Withdrawn
308	Empty First Aid Sponge Package	Withdrawn
309	Empty Days Inn Room Key Card Enevelope #29	No Objection
310	Empty Days Inn Room Key Card Enevelope #138 w/ To	Withdrawn
311	Envelope Containing Receipts	Admitted over Obj
311A	Check Inn	Admitted over Obj
311B	Credit Card Receipt	Admitted over Obj
311C	Register Audit	Admitted over Obj
311D	Phone Log	Admitted over Obj
311E	Credit Card Receipt	Admitted over Obj
312	Check Inn	No Objection
313	Photgraphic Line -Up Jose Flores	No Objection
314	Evevelope Continaing Guest Log (5) pages	No Objection
314A	Guest Log	No Objection
314B	Guest Log	No Objection
314C	Guest Log	No Objection
314D	Guest Log	No Objection
314E	Final Bill	No Objection
315	Guest Check	No Objection
316	Photgraphic Line - Up Jill Kenyon	No Objection
317	Black Gloves	No Objection
318	Black & Red Nike Tennis Shoes	No Objection
319	Composite Video Tape	Admitted over Obj
320	Enevelope Continaing 9 Photos	Admitted over Obj
320A	4 X 5 Black and White Photo	Objection Sustained
320B	4 X 5 Black and White Photo	Objection Sustained
320C	4 X 5 Color Phot	Objection Sustained
320D	4 X 5 Color Photo	Admitted over Obj
320E	8 1/2 X 11 Photo	Withdrawn
320F	8 1/2 X 11 Photo	Withdrawn
320G	8 1/2 X 11 Photo	Withdrawn
320H	8 1/2 X 11 Photo	Withdrawn
320I	8 1/2 X 11 Photo	Admitted over Obj
321	Dobson Communication Phone Records 17 pages	Admitted over Obj
322	\$250,000 - ZurichLife Insurance Policy 24 pages	Admitted over Obj

323	\$300,000 - State Farm Insurance Policy 17 pages	Admitted over Obj
324	Constitutional Rights Waiver	No Objection
325	Video Tape Confession	No Objection
326	Transcript of Video Tape Confession 38 Pages	No Objection
327A	Certification - ATF - 1page	Admitted over Obj
327B	Taurus IL46854 - 2 pages	Admitted over Obj
327C	Taurus JH14188 - 1 page	Admitted over Obj
360	Cd containing 19 Telephone Conversations	No Objection
361	Telephone Log Record 3 pages	No Objection
362	Audio Tape of 10-05-01 Recording	No Objection
362A	Transcript of 10-05-01 Recording	No Objection
363	Audio Tape of 10-25-01 Recording	No Objection
363A	Transcript of 10-25-01 Recording	No Objection
364	Audio Tape of 10-27-01 Recording	No Objection
364A	Transcript of 10-27-01 Recording	No Objection
365	Audio Tape of 11-03-01 Recording	No Objection
365A	Transcript of 11-03-01 Recording	No Objection
366	Audio Tape of 11-08-01 Recording	No Objection
366A	Transcript of 11-08-01 Recording	No Objection
367	Audio Tape of 11-10-01 Recording	No Objection
367A	Transcript of 11-10-01 Recording	No Objection
368	Audio Tape of 11-11-01 Recording	No Objection
368A	Transcript of 11-11-01 Recording	No Objection
369	Audio Tape of 11-15-01 Recording	No Objection
369A	Transcript of 11-15-01 Recording	No Objection
370	Audio Tape of 11-17-01 Recording	No Objection
370A	Transcript of 11-17-01 Recording	No Objection
371	Audio Tape of 11-22-01 Recording	No Objection
371A	Transcript of 11-22-01 Recording	No Objection
372	Audio Tape of 11-24-01Recording	No Objection
372A	Transcript of 11-24-01 Recording	No Objection
373	Audio Tape of 11-24-01Recording	No Objection
373A	Transcript of 11-24-01 Recording	No Objection
374	Audio Tape of 11-25-01 Recording	No Objection
374A	Transcript of 11-25-01 Recording	No Objection
375	Audio Tape of 11-29-01Recording	No Objection
375A	Transcript of 11-29-01 Recording	No Objection
376	Audio Tape of 12-01-01Recording	No Objection
376A	Transcript of 12-01-01 Recording	No Objection
377	Audio Tape of 12-02-01Recording	No Objection
377A	Transcript of 12-02-01 Recording	No Objection
379	Audio Tape of 12-06-01Recording	No Objection
379A	Transcript of 12-06-01 Recording	No Objection
380	Audio Tape of 12-08-01Recording	No Objection
380A	Transcript of 12-08-01 Recording	No Objection
381	Audio Tape of 12-08-01Recording	No Objection
381A	Transcript of 12-08-01 Recording	No Objection
349	Photographic Line-Up - Frank Reynolds	Not Intorduced
350	Consent to Search - Wirt Street - Shelia Fields	No Objection
351	(2) two cotton tipped swabs	No Objection
352	Search Warrant for Oral Swabs and Photographs	Withdrawn
385	Swabs	No Objection
386	Swabs	No Objection
387	Swabs	No Objection
388	Swabs	No Objection
389	Swabs	No Objection
390	Gerardi - Cutting	No Objection
391	Enevelope Containing Jackson Prints	No Objection
391A	Jackson Prints	No Objection
392	Photograph - Lifts	No Objection
393	Photograph - Lifts	No Objection
394	Enevelope Containing 2 Photos	No Objection

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395	Envelope Containing Lift Sheets	No Objection
395A	Lift Sheets	No Objection
395B	Lift Sheets	No Objection
396	Walmart Receipt	Admitted over Obj
397	Audio Tape of Excerpts	Objection Sustained
397A	Transcript of Audio Tape Excerpts	Objection Sustained
398	Preston Automobile Service Records Red Chrysler	Admitted over Obj
398 A-P	Preston Automobile Service Records Red Chrysler	Admitted over Obj
399	Preston Automobile Service Records Silver Chrysler	Admitted over Obj
399 A-J	Preston Automobile Service Records Silver Chrysler	Admitted over Obj
400	Trumbull County Recorder 494 Olive Street	Admitted over Obj
400 A-C	Trumbull County Recorder 494 Olive Street	Admitted over Obj
401	Trumbull County Recorder Washington Street	Admitted over Obj
401 A-D	Trumbull County Recorder Washington Street	Admitted over Obj
402	Trumbull County Recorder - Fonderlac	Admitted over Obj
402 A-F	Trumbull County Recorder - Fonderlac	Admitted over Obj
403A-403RR	Defendant's school records	No Objection
Defendant's Exhibits		
Deft A	Deft.'s Criminal History	No Objection
Deft B	Contains 9 subparts of Blood Swabs	No Objection
Deft F	Credit Application	No Objection
Deft G	BMV Registration Card	No Objection
Deft H	Sales Agreement	No Objection
Deft I	Lease Agreement	No Objection
Deft J	Car Registration	No Objection
Deft K	Credit Application	No Objection
Deft L	BMV Registration Card	No Objection
Deft M	Real Estate Records	No Objection
Deft N	Real Estate Records	No Objection
Deft O	Real Estate Records	No Objection
Deft P	Psychological Report	No Objection
Joint 1	Fingerhut Jewelry	No Objection
Court Exhibit 1 Orientation Instructions		
Court Exhibit 2 Exhibit List		
Court Exhibit 3 Brief In Opposition to Acquittal		
Court Exhibit 4 Jury Charge		
Court Exhibit 5 Corrected Instruction		
Court Exhibit 6 Jury Question		
Court Exhibit 7 Penalty Instruction		

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1
2 DECEMBER 20, 2001, AT 6:05 P.M.

3 IN-CHAMBERS
4

5 THE COURT: For the record, it is
6 about 6:05 p.m., December 20, 2001. I have been
7 requested to make myself available by Dennis
8 Watkins, County Prosecutor, for purposes of a matter
9 for which I have, as a result thereof, have been
10 given certain information by way of primarily
11 letters that appear to have been written between one
12 Donna Marie Roberts and Nathaniel E. Jackson over a
13 period of the last several months or years. At this
14 time, Mr. Watkins and Detective Sergeant Monroe,
15 please raise your hand.
16

17 (Whereupon, Mr. Watkins & Detective Monroe were
18 sworn by the Court.)
19

20 THE COURT: I have reviewed this
21 information to see whether or not there is probable
22 cause to permit the filing of a complaint by the
23 Prosecuting Attorney upon affidavit. Would you be

1 Monroe, you have reviewed that affidavit which you
2 have presented to me and which you have written and
3 caused to be prepared?

4 DETECTIVE MONROE: Yes, I have.

5 THE COURT: And what is contained
6 therein is true to the best of your knowledge from
7 the evidence that you have gathered in working on
8 this case the last couple of days?

9 DETECTIVE MONROE: Yes, it is.

10 THE COURT: And although apparently
11 it does not intend to state all of the evidence
12 because a lot of it hasn't been developed yet, you
13 have, in talking with various persons and what's
14 contained in and reviewing these articles and some
15 of which have been shown to me, have come to the
16 conclusion in your mind, after consultation with the
17 Prosecutor, that this matter should be presented to
18 a Judge on the basis of there being sufficient
19 probable cause to file the warrant?

20 DETECTIVE MONROE: Yes.

21 THE COURT: Okay, would you be kind
22 enough to sign that?
23

1 (Whereupon, the Affiant, Detective Sergeant Paul
2 Monroe signed the affidavit.)

3
4 ATTY. WATKINS: If the Court
5 please, I am going to have Detective Sergeant Monroe
6 also sign copies of the Affidavit for Arrest,
7 Warrant for Arrest, Howland Police Department and
8 the Prosecutor's Office.

9 THE COURT: Okay, I am accepting
10 the affidavit and after reviewing it and speaking
11 with Detective Monroe, and Detective Monroe affixing
12 his name to it, having been sworn prior to signing.
13 And do you have anything further Prosecutor Watkins?

14 ATTY. WATKINS: I understand
15 further, Judge, you have found probable cause from
16 the many pages of the letters, and the record speaks
17 for itself, and the affidavits speak for itself.

18 THE COURT: There is no question,
19 if I have ever reviewed a case, there does appear to
20 be probable cause and surely this fits that bill and
21 there is more than sufficient probable cause to
22 execute the arrest warrant. What happens thereafter
23 is another matter, but there is sufficient probable

1 cause.

2 ATTY. WATKINS: And we are also
3 requesting that the warrant be issued for their
4 arrest, to wit, the arrest of Donna Marie Roberts
5 and Nathaniel E. Jackson, and we also request for
6 the Court to sign an order sealing the record until
7 the arrest of both of these individuals.

8 THE COURT: That motion will be
9 granted. The motion will be sealed and the warrant
10 to be served and that record will not be opened
11 without permission of the Court. I am also signing
12 the warrants as prepared, the complaints that have
13 been duly signed by the Prosecutor, Dennis Watkins,
14 who has been previously sworn before signing. And I
15 am also signing the warrant to arrest. And I am
16 signing the motion and order to seal the record
17 until the warrants are executed. Check it, I think
18 I got everything.

19 ATTY. WATKINS: Paul, you know you
20 have the original and you will serve the Defendants
21 the warrant and you will make a return on the
22 original and bring it to the Court. And I am going
23 to request, Your Honor, if possible, to have the

1 Court seal the affidavit and have it kept in its own
2 secure room or assigned by the court reporter to
3 seal the envelope and not file it with the Clerk of
4 Courts until both are arrested.

5 THE COURT: That will be fine.
6 Should we not have a date issuing on the warrant?

7 ATTY. WATKINS: Yes, that should
8 be.

9 THE COURT: For the record, I am
10 going to instruct the court reporter to retain under
11 seal all the information here other than the
12 original warrant, which will be issued to the
13 police. And that once you have been notified that a
14 return is made on that, please properly file it with
15 the Clerk of Court's Office.

16 ATTY. WATKINS: And the complaint
17 and warrant are sealed along with the affidavits
18 correct, Judge?

19 THE COURT: Correct.

20 ATTY. WATKINS: After both have
21 been arrested.

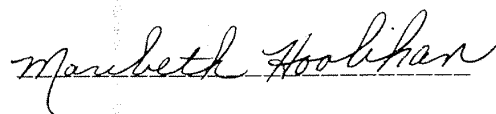
22

23 (End of proceedings at 6:20 p.m.)

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REPORTER'S CERTIFICATE

This is to certify the foregoing represents a true and correct copy of the proceedings had in the aforementioned cause as reflected by the stenotype notes taken by me on the same.



DATE: September 10, 2002 Maribeth Hoolihan

Official Court Reporter

1 FRIDAY, DECEMBER 21, 2001; In Open Court:

2 THE COURT: Mr. Consoldane, do you
3 want to bring your client up here, please? Mr.
4 Consoldane, has your client received a copy of the
5 Complaint?

6 ATTY. CONSOLDANE: Yes, Your Honor.
7 Mr. Jackson has received a copy of the Complaint.
8 He was served with that earlier today at the county
9 jail. He understands it and waives any further
10 reading in Open Court. He would like to enter a
11 plea of not guilty and request that reasonable bond
12 be set.

13 THE COURT: This plea of not guilty
14 will be entered on your client's behalf. The
15 Prosecution wish to speak to the issue of bond?

16 ATTY. WATKINS: Yes, Your Honor.
17 The charges are Aggravated Murder with second count
18 of Aggravated Burglary. We believe the evidence
19 presented shows that this is a potential capital
20 case and we request under the circumstances as
21 presented to the Court and in the affidavit, that
22 no bond be set.

1 THE COURT: This Court has had
2 occasion in the issuance of the Complaint to review
3 some of the State's evidence and I've made a
4 finding of probable cause to file a Complaint. I
5 believe that there is good and sufficient evidence
6 that as to the filing of this charge, that I would
7 not set a bond at the present time due to the
8 seriousness of the charges. Your client has a
9 right to a preliminary hearing. I would ask you to
10 get together with the Prosecutor and pick an
11 appropriate date within that time frame permitted
12 by statute. Anything else, Mr. Consoldane?

13 ATTY. CONSOLDANE: Yes, Your Honor.
14 Earlier today the Prosecutor approached me and
15 asked about giving consent to look at Mr. Jackson's
16 finger. They said they wanted to remove the
17 bandage and take pictures of it. I said that we
18 would not give consent to that, and he said that
19 would be fine, that he would get a search warrant.
20 Well, I was talking with Mr. Jackson and the
21 Sheriff's department had already done that without
22 a search warrant. They had already removed his

11

1 band-aid and took pictures of his finger. I would
2 just request the Court to instruct the Prosecutor
3 and the Sheriff's department to not take any
4 further evidence from Mr. Jackson without first
5 obtaining a search warrant. We unilaterally
6 disagreed with any type of consent, and I think
7 that's not proper and they shouldn't be allowed to
8 do this.

9 THE COURT: Well, you will have the
10 appropriate time to enter any objections you have
11 to any of the procedures used. We have a very
12 capable, in my opinion, law enforcement personnel
13 around, and I think that they are well aware that
14 anything of that nature has to be obtained either
15 with the consent or by a search warrant. I'm sure
16 that Mr. Watkins will see that everything is done
17 in an appropriate manner.

18 ATTY. WATKINS: I believe it has
19 been, Your Honor. This man went for medical
20 treatment. This should be litigated in the proper
21 forum.

22 THE COURT: That's what I'm saying.

1 ATTY. CONSOLDANE: I'm just saying
2 this happened, and I don't want it happening any
3 more.

4 THE COURT: It's on the record.

5 ATTY. WATKINS: It may happen
6 depending on the facts and circumstances.

7 THE COURT: I understand. We'll get
8 into that at the appropriate time. Anything
9 further?

10 ATTY. CONSOLDANE: No, Your Honor.

11 THE COURT: Mr. Ingram, do you want
12 to bring your client forward?

13 ATTY. INGRAM: Your Honor, this is
14 the Defendant, Donna Roberts. She will acknowledge
15 receipt of a copy of the Complaint filed herein.
16 This is an initial appearance and we will abide by
17 the Ohio Rules of Criminal Procedure, which
18 provides that you are not called upon to enter a
19 plea in a felony case at an initial appearance.
20 So, we will not do that. We will not request bail
21 at this time, but we reserve the right to raise
22 that issue at a later time.

13

1 THE COURT: It's always an issue to
2 be raised. Okay, you do acknowledge receipt of the
3 Complaint?

4 ATTY. INGRAM: Yes.

5 THE COURT: You've read it and
6 understand it?

7 ATTY. INGRAM: Yes. We do waive the
8 reading.

9 THE COURT: Do you have a date for
10 preliminary hearing you wish to set?

11 ATTY. WATKINS: Your Honor, we would
12 request considering the holiday, a preliminary
13 hearing on December 31st at 11:00 a.m.

14 THE COURT: Is that convenient to
15 both counsel?

16 ATTY. CONSOLDANE: Yes, Your Honor.

17 ATTY. INGRAM: I'll make it
18 convenient.

19 THE COURT: There will be no bond
20 set on this matter at the present and defense has
21 reserve the right to enter a plea at a later date.

22 (OFF THE RECORD)

1 ATTY. WATKINS: Your Honor, the
2 affidavits pursuant to the filing of our charges
3 yesterday were sealed and the order is until both
4 parties were arrested and therefore, I at this
5 point would request the Court to unseal the record
6 unless the Court --

7 THE COURT: I have already
8 instructed the reporter to file those.

9 ATTY. WATKINS: I wanted to make
10 sure we were conforming with the public records
11 law.

12 (OFF THE RECORD)

13 ATTY. INGRAM: On behalf of Donna
14 Roberts, I would request that the affidavit for
15 arrest warrant remain unsealed. It contains
16 references to evidentiary matters. Attached to it
17 are several letters, which I have not had an
18 opportunity to review, but I imagine that the State
19 will allege that these letters constitute
20 documentary evidence in this matter. Eventually,
21 we are going to have to pick a jury, our pool of
22 jurors is in Trumbull County. They will be exposed

1 to this pre-trial and I would respectfully submit
2 that the affidavits should remain sealed, at least
3 until we empanel a jury.

4 ATTY. CONSOLDANE: I would join in
5 that motion, on behalf of Mr. Jackson. The
6 Complaint should be enough to satisfy the needs of
7 the press at this time. I don't believe that there
8 is any reason to unseal the affidavit at this time.

9 ATTY. WATKINS: Your Honor, the
10 public records law on this issue, I believe is
11 clear. We have had cases before where affidavits
12 have been filed with this Court, and always they
13 have been released as a public record at the
14 appropriate time. I have joined in with defense
15 counsel on various times for example to eliminate
16 disclosure of video confessions prior to trial,
17 which are always litigated prior to trial, and in
18 fact, the State lost on that case and that is the
19 Danny Lee Hill case and another one was the case
20 against a man named Parks. Therefore, it is the
21 State's position from its knowledge of the law and
22 looking at the circumstances that it is a public

1 record, just like all filings and all hearings
2 before the trial and the State does not object to
3 its release.

4 ATTY. INGRAM: I think I would
5 request that you at least not unseal the affidavit
6 until Monday and that you give us an opportunity to
7 brief the public records.

8 THE COURT: Well, that is exactly
9 where I'm going. The Court -- I don't want to get
10 into a situation where we are going to have a
11 problem with empaneling a jury in this county
12 because of pre-trial publicity. I think the press
13 at some point has every right to review
14 particularly what has been filed. I think that the
15 Prosecutor is correct on that, but I'm going to
16 allow you, because of the nature of the contents,
17 until Monday to brief the thing, to find out why
18 Mr. Watkins is not correct. Part of that was the
19 material you are referring to was used as a basis
20 of the probable cause by way of affidavit, to have
21 the Complaint issued. That is a matter of public
22 record probably. Your task is to explain to the

1 Court, convince the Court that there is some
2 prejudice or bias that is going to be put upon your
3 Defendant, other than any other Defendant in the
4 similar circumstance. So, I'll allow you until
5 Monday. I'll order that that portion of the record
6 be sealed.

7 ATTY. WATKINS: I would suggest that
8 if the Court is going to do that, that under public
9 records law that the press be invited to
10 participate, because they have an interest in
11 litigating this and I think the law requires that
12 the press --

13 THE COURT: We have many spokesmen
14 here. Who wishes to address this?

15 ATTY. WATKINS: I think they would
16 have the opportunity.

17 THE COURT: For purposes of this
18 motion, do you have anything further than what you
19 have heard?

20 ATTY. WATKINS: I would suggest to
21 give them until Monday so their attorney can
22 respond.

1 ATTY. CONSOLDANE: The Court is
2 closed Monday and Tuesday.

3 ATTY. INGRAM: I'll do a memorandum.
4 I'll then send a copy of that memorandum to Mr.
5 Watkins, and I'll also send a copy of it to the
6 Warren Tribune and the Youngstown Vindicator and if
7 they then choose to move to intervene, that is
8 certainly something that they are entitled to do.

9 THE COURT: I am thinking of time
10 element here.

11 ATTY. WATKINS: It would have to be
12 early next week. I don't know how you could do it
13 otherwise.

14 THE COURT: I think the appropriate
15 thing here, we have this set for 11:00 on the 31st,
16 that gives everyone sufficient time to get your
17 briefs filed. I think that is appropriate.

18 ATTY. CONSOLDANE: Thank you.
19 (End of Hearing at 11:15 a.m.)
20
21
22

1 Monday, December 31, 2001:

2 (In-chambers at 11:00 a.m.)

3 THE COURT: At the request of the
4 Court, we are conducting some preliminary matters
5 in-chambers, prior to going into Court. The Court
6 has several motions before it this morning. The
7 first I would like to deal with is Motion to
8 Intervene, filed by Steve Bolton on behalf of WFMJ
9 Television, Inc. And there is a motion by the
10 Vindicator Printing Company in opposition, too.
11 Vindicator has filed a motion in opposition to
12 Defendant Roberts' motion to seal Court records. I
13 have also received Defendant's motion in memorandum
14 to hold affidavit and Exhibits under seal. Are
15 there any other motions that have been filed?

16 ATTY. CONSOLDANE: First of all, I'd
17 object to Mr. Bolton's motion being heard. I have
18 not been given a copy of that. I didn't know he
19 was going to intervene. I don't think he has any
20 business to intervene in this matter. He hasn't
21 served me with a copy and I represent one of the
22 Defendants in a capital murder case. I don't

1 believe he has any right to have this motion heard
2 today. The other motion as far as the Vindicator,
3 I was handed the motion just as we walked into
4 Court today and I would like to clarify one thing.
5 One thing on that motion, is that motion is
6 opposing the Defendant's request to seal the
7 record, and we did not request to seal the record.
8 The Prosecutor, on their own, sealed that affidavit
9 with the Court. We are only opposing them trying
10 to unseal at this time. They sealed it, we think
11 that it should remain sealed.

12 THE COURT: Steve, it is your
13 motion. You should address the thing.

14 ATTY. BOLTON: You are talking about
15 just the motion?

16 ATTY. WATKINS: This is the motion
17 to intervene. You are going to hear our responses
18 to that.

19 THE COURT: It is his motion.

20 ATTY. CONSOLDANE: Even though I
21 object.

22 ATTY. WATKINS: I'm going to object

1 to the intervening.

2 THE COURT: He has the right to
3 address the motion. You have the right to object
4 to it.

5 ATTY. CONSOLDANE: I can't object to
6 it, if I haven't seen it.

7 THE COURT: Mr. Bolton, what is the
8 reason that you can give why that motion should be
9 granted?

10 ATTY. BOLTON: Your Honor, this
11 obviously affects the First Amendment rights of the
12 news media, both the news media who are present
13 here by counsel as well as other news media who,
14 for reasons best known to them, decided not to
15 appear by counsel. I understand that perhaps one
16 segment of the news medium, a local newspaper here
17 appeared by letter or asked you by letter to
18 consider this matter.

19 THE COURT: Let me interrupt you.
20 For the record, besides the Vindicator and WFMJ, I
21 have also received correspondence from the Tribune,
22 from a Frank Robinson, Editor, whereby he calls

1 upon the freedom of information act, 5 U.S.(c) 552
2 for eliciting response from the Court as to justify
3 the actions that have been taken. Go ahead.

4 ATTY. BOLTON: After I filed this
5 motion, I did serve Mr. Juhasz and Mr. Ingram. I
6 was not aware of Mr. Consoldane's involvement, but
7 I served them with a copy of my motion. And I will
8 point out that my similar motion in a case some
9 years ago had been denied and that that denial had
10 been affirmed by the Court of Appeals or been
11 denied by the Court of Appeals, had actually been
12 filed in the Court of Appeals and the idea of
13 intervention in the Eleventh District, I can't
14 misrepresent the situation to the Court, in the
15 Eleventh District, the State, the case which Mr.
16 Juhasz cites is still good law. I would submit
17 that it is distinguishable because at the time, the
18 State, ex rel Vindicator Printing Company vs.
19 Watkins was tried. The issue in that case was
20 whether the paper could have access to the
21 Prosecutor file, to portions of the Prosecutor
22 file, as opposed to a document which was filed in

1 the Court. We simply seek a way in which we can be
2 heard, which we come before the Court and make some
3 effort to protect our client's rights, our First
4 Amendment rights to examine matters which are
5 consedingly public records. An affidavit filed
6 with the Court is by definition, any definition, a
7 public record, but certainly statutorily a public
8 record. We simply seek a vehicle by which we can
9 be heard and protect our rights. Short of mandamus
10 at this point, we feel there is no reason to file a
11 mandamus action. The Court has not taken any
12 action which would warrant a mandamus action at
13 this point. We simply seek a vehicle to be heard,
14 and to express to the Court such law as we believe
15 might be appropriate in guiding the Court, which
16 might be of assistance in guiding the Court towards
17 a decision in this matter. We have no wish to
18 effect the outcome of the criminal case or
19 interfere or intervene in it for the purpose of
20 affecting any substantive result in the criminal
21 case.

22 THE COURT: Fair enough. Dennis?

1 ATTY. WATKINS: I would indicate in
2 prefacing the record that this began as a result of
3 the State requesting the Court to seal the record
4 when we received warrants for the arrest of the
5 Defendants in this case, pursuant to an affidavit
6 filed by Detectives from the Howland Police
7 Department and that has been done in this county
8 for years and counties throughout Ohio for years
9 and the reason that we do that is that an officer,
10 and officers that go out with arrest warrants,
11 there could be danger, if this were to be released
12 at the point in time before a person is
13 apprehended, that it is necessary to have a period
14 of time, the affidavit be secret until the person
15 is arrested and charged. This is commonly done
16 with secret indictments, however, Grand Jury
17 transcript is not made public record pursuant to
18 criminal rules. Once the person has been or
19 persons have been arrested, the purpose of the
20 dealing is finished, is completed, and becomes
21 public record, and that has been the policy of the
22 Trumbull County Common Pleas Courts, since I can

1 remember in the early 80's, and that is why at that
2 point, that I indicated in as far as I was
3 concerned, my motion was limited for the purpose of
4 having these Defendants arrested. They were
5 arrested and there is now a public case number, a
6 public complaint and a public affidavit. And my
7 view is that that would be a public record.
8 However, there are Exhibits that are attached to
9 the affidavit, that are pieces of evidence, such as
10 a confession, heretofore the Supreme Court of Ohio
11 and I believe still the law has maintained that and
12 a change of venue is a remedy, if there is pretrial
13 publicity and I have for a long period of time been
14 dealing with cases where the press has access to
15 affidavits and information and we still are able to
16 obtain trials locally for example in the Stanley
17 Adams case, even though this Honorable Court had a
18 trial the year before, we tried Adams, and even
19 though the media endlessly printed in the paper
20 stories about his being, about him being a serial
21 killer and going through his record, to the
22 astonishment of many, there are people in this

1 county who do not read the newspapers and who do
2 not watch local T.V. and we were able to obtain a
3 jury. I believe that I would go personally to the
4 English system where we have very little
5 information when the case is tried. However, that
6 is not the law and that is why I express my opinion
7 to the Court at the time that these Defendants were
8 arraigned on affidavit of complaints. I believe
9 further, however, that at this point in time, and
10 Attorney Bolton has mentioned, that I don't believe
11 the newspaper or the media can intervene in a
12 criminal case, and their remedy would be mandamus,
13 so I'll object as a matter of principle that they
14 can not intervene in this case.

15 THE COURT: You have already stated
16 your objection?

17 ATTY. CONSOLDANE: I'll go last.

18 ATTY. MILLETTE: We base our motion
19 on our First Amendment right to public access
20 documents and this is particularly important in the
21 context of these documents, these are police
22 affidavits supports the arrest warrant, and the

1 First Amendment is in public records to access, is
2 most important in that context and the Government's
3 exercise of that kind of power. There are many
4 other ways in which the Defendants' rights can be
5 protected, other than keeping these documents
6 sealed. There is a change of venue. There is Voir
7 Dire, as Attorney Watkins said, there are many
8 people who aren't going to read the papers, don't
9 even get the papers, won't see this news and I
10 think the case law strongly supports that position.

11 THE COURT: John?

12 ATTY. JUHASZ: Judge, one of the
13 first things I want to say is I understand what Mr.
14 Watkins has said about the Supreme Court's decision
15 about change of venue. Two things strike me as
16 curious about that. The first is that seldom do
17 they cite or go into any analysis of what I think
18 is still the seminal case, which is the Sheppard
19 case. And that is the case that makes it very
20 clear that it is the obligation of the trial judge
21 to do what is necessary, before a trial starts,
22 before it becomes a media circus to make certain

1 that the Defendant's rights to a fair trial are
2 protected. Secondly, it is easy and with all due
3 respect, I would have to say a bit cavalier for
4 representatives of the media to say, "Well, don't
5 worry, you can have a change of venue or all sorts
6 of other things that can be done." That is easy to
7 say, but there are to my recollection about two
8 hundred people on death row, and I believe only
9 eight cases where venue has been changed and some
10 of those had to do with the Lucasville riots and
11 the reason I bring that up is because as a
12 practical matter, while everybody stands here in a
13 hearing like this and says, "Don't worry, don't
14 worry, there is a change of venue." The fact of
15 the matter is this doesn't happen very often. I
16 know you and I were involved in a case where it did
17 happen. I have submitted there were other issues
18 besides pre-trial publicity that warranted that
19 particular change of venue. With regard to the
20 media, I would have to mirror what Mr. Watkins and
21 Mr. Consoldane have said and even what Mr. Bolton
22 has agreed to and that is that the Watkins case

1 outside of the Eleventh District, which was tacitly
2 affirmed by that point by the Supreme Court of Ohio
3 is good law in this district.

4 THE COURT: Do you agree John or
5 Steve that it is somewhat distinguishable from the
6 fact situation here?

7 ATTY. JUHASZ: I don't and I'll tell
8 you why. If you look through the Supreme Court
9 opinion, when the case got to the Supreme Court,
10 one of the things they talk about and one of the
11 things we quoted in our memo was the concern that
12 trial judges also should have, to insure that a
13 Defendant has his right to a fair trial. There are
14 as we set forth, at least two reasons these are not
15 public records in our estimation. Without
16 question, I think that is clear and I, and Mr.
17 Watkins have conceded as much, that is clear about
18 the items which are potentially evidentiary
19 materials. Setting the affidavit to one side. But
20 as we also tried to make clear in our memorandum,
21 the Watkins case and I don't see that Steckman,
22 which was the later Supreme Court case and I guess

1 the seminal public records case, from the Supreme
2 Court, I don't see anything in Steckman that has
3 changed what happened in the Watkins case, and in
4 those cases, they make it clear that when the
5 disclosure of those items is prohibited by State or
6 Federal law, then they are not public records.
7 That goes to the Constitutional fair trial stuff.

8 THE COURT: Did not the previous
9 Vindicator, Watkins case go on (a)(2) of that
10 section of confidential enforcement?

11 ATTY. WATKINS: Dealt with work
12 product and investigatory.

13 ATTY. CONSOLDANE: I think that
14 neither the T.V. or the newspaper, or the newspaper
15 can intervene in a criminal case. I think they
16 have a proper remedy, and it is not a motion to
17 intervene. They can certainly file for writ of
18 mandamus to enforce that. I don't think it is
19 proper for them to intervene in a criminal case.
20 Then, secondly, is that at this point in time, both
21 Defendants have been indicted by the Grand Jury.
22 The minutes in the Grand Jury are secret and they

1 are not going to be released. If they would have
2 directly presented this to the Grand Jury, there
3 would be no need for this affidavit to have been
4 filed. This affidavit also contained a lot more in
5 that, than what was necessary to go out and arrest
6 these two individuals. There is a lot of things
7 that were put in there, just to appeal to people's
8 pure interest and I think that is wrong upon the
9 State to do something of that nature and also is
10 that of all of these cases that we have, in these
11 death penalty cases that do get press, it is
12 amazing that everybody comes in here and says that
13 they don't remember reading anything about it, or
14 formed any opinion, but that gets stuck in the back
15 of their minds and as soon as it is brought up in
16 Court, it triggers something and they remember, and
17 it is too late at that time for them to raise their
18 hand. Nobody wants to admit that they read the
19 newspaper and have already formed an opinion, when
20 they come in here to sit in a trial, and it is
21 unfair to the Defendant to have to phrase it. It
22 is the whole procedure of a death penalty case is

1 unfair, because you have to get jurors that wanted
2 to say, "Yes, I can invoke the death penalty." And
3 they are already slanted towards law and order. To
4 get this type of pre-trial publicity on things that
5 we can't comment about, and actually the Prosecutor
6 can't comment about, is a lot of that stuff is
7 evidence and a lot of stuff in that affidavit are
8 purely conjecture of what the police officer thinks
9 might have happened, because of a couple other
10 things that he has picked up as evidence.

11 THE COURT: That is what an
12 affidavit is. Many times it contains some
13 assumptions and conjecture based on facts that are
14 presented and then the probable cause, of course,
15 is a different standard from beyond a reasonable
16 doubt.

17 ATTY. CONSOLDANE: One last thing, I
18 think that the newspaper and the press should be
19 able to look at that, but not until it is presented
20 in Court. What is the difference? They are going
21 to get it. They are going to get to see this
22 information eventually, after it's presented in

1 Court. Why is it so necessary that they have it
2 now before the Defendants go to trial? They are
3 going to get the information. Everything that is
4 contained in the affidavits will probably be
5 presented at trial, after a jury has been picked
6 and they have been admonished. To keep that sealed
7 until we pick a jury, what is the different? They
8 are going to get the information anyhow. What is
9 the difference in the time?

10 ATTY. BOLTON: The holding or the
11 language in State, ex rel Vindicator vs. Watkins,
12 that newspapers or media couldn't intervene in a
13 criminal case was essentially in that case dicta.
14 It was simply supporting the holding. The Supreme
15 Court has made in that case and elsewhere that the
16 proper remedy after a Court has acted is mandamus,
17 which is, that is in the statute. But as the Court
18 knows, there is a long history in Ohio of media
19 intervening in criminal cases. For example, before
20 it was established that the media had a right to be
21 present at certain parts of the criminal case, the
22 media regularly intervened in criminal cases to

1 gain access to suppression hearings and matters of
2 that kind.

3 THE COURT: That is on a different
4 issue.

5 ATTY. BOLTON: I understand, but the
6 principle is the same. We are not intervening in
7 any substantive way, we are simply speaking in a
8 forum to be heard before the possibility of our
9 rights being foreclosed comes up, and trying to
10 foreclose other lengthy litigation, which may well
11 have the effect of prejudicing the Defendant, far
12 more than anything that might be done here today.
13 The second point here is that both the statute and
14 all of the case law which bears on this issue,
15 clearly indicate that an affidavit filed with the
16 Court, filed with the Clerk of Courts here in the
17 Courthouse is a public record, and the Defendant,
18 the Defendants have the duty to show why it should
19 not be disclosed. What they are arguing is, they
20 are arguing, "Well, this might prejudice a
21 Defendant, somehow this information might be
22 difficult for the Defendant to overcome in Voir

1 Dire. Somehow this information might be
2 prejudicial if let out in the community." But what
3 they are not able to show is why it is not a public
4 record, and why it should not be disclosed under
5 149.143 and there is a good reason for that. There
6 is no reason why it should not be disclosed under
7 149.143 and the statute and case law is quite
8 explicit that cases, all of the cases decided under
9 149.143 says if it is filed with the Court, it is a
10 public record and even counsel for the Defendants
11 have agreed. If an Exhibit is filed with the
12 Court, it is a public record. Nobody even
13 questions that, well an affidavit is filed with the
14 Court, public record. That is the end of the story
15 and whether we are simply heard on the issue, or
16 whether we are allowed to intervene on the issue,
17 that doesn't, substantially that does not matter at
18 all, what does matter is that the Court in looking
19 at the statute, hold the Defendant to their burden
20 of proof in this matter, and if they are hold to
21 their burden of proof, they can't meet it.

22

1 ATTY. CONSOLDANE: He's right that
2 it is a public record, but this Court sealed that
3 public record, and we are not saying that he
4 shouldn't be entitled to it some day, I'm saying to
5 protect the Defendants' interest, leave it sealed
6 for a while longer. And then allow it to be
7 reviewed by the press. What harm is that going to
8 cause to the First Amendment? It is already
9 sealed. Give our clients a fair trial and then
10 release all of the information to the press.

11 ATTY. WATKINS: Just to make the
12 record, the record was, we made a motion in-camera
13 pursuant to the affidavits and the warrants, for a
14 sealment for a finite period of time. And they
15 made a motion, and I think it was Jerry, you wanted
16 to object to that, and they made a motion.

17 THE COURT: I never granted their
18 motion, what I did was fail to act on their motion.
19 The seal was maintained.

20 ATTY. INGRAM: The Prosecution moved
21 to seal, the Prosecution then moved to unseal. I
22 objected.

1 ATTY. WATKINS: No. The original
2 motion ex-parte was, we made a motion, when we got
3 together and Paul Monroe came in, we made a motion
4 to seal until the Defendants were arrested. That
5 was the motion.

6 ATTY. CONSOLDANE: We don't know
7 that.

8 ATTY. WATKINS: I mentioned to the
9 Court under the motion granted, that it should be
10 unsealed. That is the standard motion that I make
11 in all of these for the last 20 some years.

12 THE COURT: Let the Court of Appeals
13 deal with that. Criminal case is a case between
14 the State and an individual or individuals. They
15 are the only parties to the action. The news media
16 have no right to intervene in this action. They do
17 have a right to mandamus under the information act
18 for public records. There is no question the
19 affidavit, upon which the warrants were issued has
20 been filed. I think anybody other than somebody
21 representing a news organization would have to
22 agree that the English have a better system to see

1 that this abstract thing of justice is probably
2 done, because inevitably, it divulges upon so many
3 people to sit and listen to the facts. We can
4 argue both sides all day and never come to any
5 reasonable conclusion as to what effect it has on a
6 trial. Any sane person has to acknowledge that
7 pre-trial publicity has at times a monumental
8 affect upon a fair trial. But we happen to live in
9 a country, which has, thank God, the bill of rights
10 and one of those is the First Amendment right.
11 Although the newspapers seem to think that is
12 exclusively their right. It is a right that
13 belongs to everyone. The newspapers have no
14 greater right than any other individual to the
15 rights contained in the First Amendment. You
16 wouldn't believe that by reading some of the cases.
17 In any event, the public record law has exemptions.
18 The case alluded to before against Mr. Watkins from
19 the Vindicator dealt with this (a)(2) which was
20 confidential law even for the investigator, and the
21 case went through great length through the history
22 of what happened and how they were called in. The

1 newspaper was trying to get the material found by
2 that investigation. There is another essential,
3 (a)(4) that says trial preparation record means any
4 record that contains information that is
5 specifically compiled in reasonable anticipation of
6 in defense of, a civil or criminal action. I don't
7 know that that directly applies here. It goes on
8 to say including the independent thought process
9 and personal trial preparation but that says,
10 specifically compiled in reasonable anticipation
11 of. I would think that this affidavit is
12 specifically compiled in anticipation of, but it is
13 filed as a public record, and here's the rub on
14 this whole thing, which the upper Courts are going
15 to have to deal with. We all start out and say, we
16 got to balance the First and Sixth Amendment right
17 of Defendant to have a fair trial. If you accept
18 the undebatable fact that pre-trial publicity
19 contained at trial, the Courts have held, well, you
20 have right to Voir Dire, and then you end up with
21 what the Defense is afraid of here, people get up
22 and say, "No, I don't remember anything about it.

1 I read something about it, and I don't recall the
2 details." That is for anybody who reads the
3 newspapers, a person who takes the time of reading
4 a newspaper is usually of the level of intelligence
5 that they aren't going to be so cavalier as I would
6 get, but that is part of the system. The Courts
7 say, Voir Dire can cure that. And they say that if
8 you can't, then you have the change of venue to
9 cure it. And then it is transferred to another
10 jurisdiction, where it is put in the news media
11 again. I would note, for the Appeals Court that
12 the affidavit contains facts, some conclusions,
13 which are absolutely necessary in order to get a
14 probable cause finding. The thing that does
15 concern me is so many quotes contained in here,
16 that I think should be evidentiary material. I
17 think it is possible to go through this affidavit,
18 to give to the media all of the necessary details.
19 I don't really agree, although I have ruled, you
20 are not a part of it, you will be granted an
21 opportunity to express your opinion. The whole
22 purpose for the First Amendment is to keep

1 Government honest. Things don't happen in secret,
2 what have you. You have perhaps the duty, by way
3 of the media to make sure that when the Government
4 is prosecuting, that the public is informed as to
5 the basis of it, otherwise you could hold people
6 for long periods of time and nobody would know
7 whether or not the Government is acting on good
8 grounds or not, so that is the right we don't want
9 to give up. But the other aspect and I think it is
10 very present in this case is there is a salacious
11 part of this that everyone just kind of has picked
12 up, must be present. That is the part that
13 concerns me, because that doesn't add anything to
14 the First Amendment, it might be good for selling
15 newspapers or T.V. programs, but that is the part
16 that concerns me where we start getting into the
17 balancing act with the Sixth Amendment right being
18 affected. Mr. Juhasz has mentioned that the Court
19 has to do a balancing act at some point. I think
20 that this public records act is short sides in some
21 way, but it is the law we must follow. I think
22 what I'm going to do here is to order that the

1 Prosecution turn over most of this affidavit, with
2 certain parts redacted and I am doing that, by
3 saying that those portions may be very essential to
4 the Defense, does not hinder the Prosecution in any
5 way, except that it keeps out some of these matters
6 that have no justifiable use at this point, other
7 than to possibly taint a future jury pool.

8 ATTY. BOLTON: Speaking perhaps as
9 an officer of the Court and not as an intervenor,
10 if I may, I had heard, I don't know what is in this
11 affidavit, but I have heard perhaps rumors that
12 there was some material in it that might be
13 interesting, but not particularly publishable.

14 THE COURT: That is true. I think
15 some of this you would not publish because of its
16 very nature. It would not be in good taste.

17 ATTY. INGRAM: You can't speak for
18 the Tribune.

19 ATTY. BOLTON: Anticipating that
20 such an issue might come up, I believe that the
21 Supreme Court has spoken to this issue, and I refer
22 to State ex rel Beacon Journal Publishing Company

1 vs. Maurer, 91 Ohio St. 3rd, 74. It was decided on
2 February 14th of this year and if I might read a
3 little portion of this. This was about incident
4 reports, which everybody considers to be public
5 records, and incident reports don't even rise to
6 the level of filing like an affidavit, which is far
7 more clear. The Court ruled that incident reports
8 which contain material from 911 tapes were public
9 records, even though the stuff from the 911 tapes
10 might not be otherwise public records and it said,
11 "We rule this way despite the risk that the report
12 may disclose the identity of an uncharged suspect.
13 A deputy incorporated the typed narrative
14 statements by reference in the incident report.
15 He consequently incorporated them in a public
16 record. He can not now remove the public records
17 cloak." "It does not matter that release of the
18 tapes might reveal the identity of an uncharged
19 suspect or contain information, which if disclosed,
20 would endanger the life of physical safety of a
21 witness." "Once clothed with the public records
22 cloak, the records can not be defrocked of their

1 status." Now, what this case says and what the
2 Supreme Court has said, is that once material that
3 would otherwise be prohibited from disclosure under
4 the public records act is placed in a public record
5 act, in a --

6 THE COURT: You are saying once it
7 is turned over you can't ever get it back?

8 ATTY. BOLTON: In this cae, it was
9 an incident report, what the Court has before it is
10 an affidavit. Everybody concedes an affidavit is a
11 public record. This affidavit may contain
12 material, which the Court believes in good
13 conscience ought not to see the light of day, for
14 reasons of either good taste or for reasons that it
15 might make it more difficult to pick a jury, but it
16 is an obtained public record status by reason of
17 the fact that it is included in the body or
18 attached to an affidavit and therefore, I believe
19 the Supreme Court has ruled that it must be
20 disclosed.

21 THE COURT: You are saying that the
22 Supreme Court by virtue of that case, just gives

1 the total power to the Prosecution, the State, to
2 put it all out there, and let the newspaper grind
3 it up.

4 ATTY. BOLTON: Having defended, I
5 have never been a Prosecutor, but I have defended a
6 few people here and there, and as we all know,
7 there is more than one type of affidavit. There is
8 a notice affidavit, which basically sets out the
9 basic elements of the crime and little else, and
10 then there are affidavits such as we have seen come
11 through in the course of all of the prosecutions
12 from Mahoning County, against the judges and
13 lawyers, which are extra ordinarily detailed.
14 Extra ordinarily detailed and contain virtually the
15 Government's entire case. And the Government has a
16 right to do that. They have the right to, they
17 have the right to file an affidavit which contains
18 their whole case, and risk the possibility that it
19 may, that the defense may come back and say, you
20 prejudiced our client, we have to have a change of
21 venue, and force the Prosecution to go out of the
22 county. Now the Prosecution knows that when it

1 files the affidavit and knows that it is giving the
2 Defendant's remedies, both at the trial level and
3 subsequent, down the years on appeal on a capital
4 case. Now, the Prosecutor in this county is
5 unusually experienced in capital cases. He's had
6 quite a number of them, which he's tried himself,
7 so the Prosecutor in this case knows what he's
8 doing in capital cases. Whatever other
9 disagreements I have had with Mr. Watkins over the
10 years, he does know what he's doing in capital
11 cases and if he chooses to say put the matter in an
12 affidavit, it is because he thinks the public ought
13 to know about it and Court ought to know about it.

14 ATTY. CONSOLDANE: Let me say one
15 thing, is that Mr. Watkins would not go and say any
16 of these things in the newspaper. He'd be barred
17 under the code of ethics, you can't talk about the
18 case. This is a way around him being able to
19 discuss his case, to the public, by putting it in
20 an affidavit. It is an affidavit, I have to agree,
21 it is filed there, and it is subject to being
22 public information, but there is nobody that said

1 when it has to be released. It doesn't have to be
2 released today, tomorrow or next week.

3 THE COURT: If it is a public
4 record, it's a public record.

5 ATTY. CONSOLDANE: If it was just a
6 public record if it was just filed, that is correct
7 but it was under seal, there is not one case that
8 says when it has to be unsealed.

9 ATTY. WATKINS: May I respond?
10 John, do you want to go first?

11
12 ATTY. JUHASZ: I wanted to clear up
13 a couple of things, one if it is not clear, our
14 motion is that we don't agree with Mr. Bolton that
15 it is a public record. I understand what the Court
16 is saying, and the authority for that is not only
17 in the Statutes, but in the Watkins case.

18 THE COURT: Where do you get the
19 authority under the statute?

20 ATTY. JUHASZ: Under statute and I
21 am talking about the statute as it is presently
22 numbered. It is (a)(1)(g) and basically if you

1 will permit me to paraphrase it, it defines public
2 record as being records kept by public office
3 except that public record does not mean any of the
4 following, and when you drop down to (q), it says
5 records the release which is prohibited by State or
6 federal law. Now, while that might sound
7 unnecessarily broad, that doesn't give us a whole
8 lot of guidance. Let me direct the Court to the
9 quote we have on page 3 of our memo which is from
10 the Ohio Supreme Court in again, Vindicator
11 Printing vs. Watkins, and the first thing to do of
12 course is talk about the concerns the United States
13 Supreme Court had in Sheppard vs. Maxwell. "Many
14 devices are available to a trial court to prevent
15 the prejudicial effect of such pretrial publicity,
16 including a change of venue and sequestration of a
17 jury. However, if during the pendency of the
18 criminal proceeding, such measures have not been
19 undertaken or are ineffective in assuring an
20 impartial determination of the issues and a danger
21 of material prejudice to a criminal defendant is
22 posed thereby, the criminal defendant clearly

1 possesses standing to challenge the release of such
2 information in an action brought pursuant to R.C.
3 149.43. Inasmuch as such disclosure would
4 prejudice the Defendant's rights under the State
5 and Federal Constitutions, the information at issue
6 would constitute records the release of which is
7 prohibited by State or Federal law." The Ohio
8 Supreme Court has said that if these are records,
9 the disclosure of which would prejudice the
10 Defendant's rights under the State and Federal
11 Constitutions, and again by implication, state
12 Constitutional rights, then under (q), they are not
13 in fact public records.

14 ATTY. BOLTON: Assuming you're
15 right, where's the beef? Where's your showing of
16 prejudice?

17 THE COURT: That gets to the very
18 heart of this argument here.

19 ATTY. WATKINS: I need to respond.
20 I would like to indicate that the affidavit that
21 was filed, I think it is clear that in our opinion
22 that there is some discretion with the Court and I

1 have already reiterated it twice, once the reason
2 for the sealment is completed, per the original
3 motion, then it becomes a public record. I want to
4 go back to a case with Dave McLain, with the Danny
5 Lee Hill case where Jim Lewis made a motion to
6 close the Courtroom for the suppression hearing
7 confession, video confession, which is as awful and
8 salacious as any confession anyone would hear, and
9 I agreed with Defense counsel to close the
10 Courtroom.

11 THE COURT: And that, of course, is
12 improper.

13 ATTY. WATKINS: And participation,
14 but the bottom line is that Ohio law, well, you can
15 close the Courtroom, but you have to have a hearing
16 to show that there is this prejudice which John
17 alluded to, and at that point in time, Judge McLain
18 overruled both motions, where I joined in, and it
19 was made public, and there are a lot of confessions
20 that right before trial, that we are going to play
21 in Court that are very salacious and these other
22 evidence and letters are going to be public. This

1 is prejudicial. Timing may be of importance as to
2 when something is released at suppression right
3 before trial or at the initial appearance. If I
4 had my way, I would have the -- I think the other
5 problem here is that you have a number of cases,
6 since Sheppard that modify and we are dealing with
7 McVeigh, just looking at the publicity of the
8 McVeigh case, Murphy vs. Florida which discusses
9 pre-trial publication where we deal with the media
10 presence in the Courtroom, right to T.V. cameras,
11 we have historically taken the First Amendment and
12 given the information to the press, and we have
13 been able to go through the process. I objected
14 when Robert Parks, when the T.V. cameras wanted to
15 go into the Courtroom, because I have felt this
16 kind of publicity is negative. I still have great
17 concern for it, but in my opinion, the Court has
18 here, a public document, that contains in my
19 opinion, evidence that goes to circumstantial
20 evidence dealing with motivation, which proves
21 probably cause in this case. And so it is subject
22 to some control and should be subject to more

1 control by the Court, but the problem I see is the
2 historical development in the past 20 or so years
3 against the Sheppard case, especially with the
4 public records law. I have no problem with the
5 Court ruling in the sense that I agree with the
6 fact that there should be some control dealing with
7 for example letters or maybe parts of the
8 affidavit, but I'm not too much in favor of the
9 climate here is not as good as it should be and I
10 think the law dealing with, that dealing with the
11 911 tape, where it is an incident report, it is a
12 public record, is different from when we are
13 dealing with filing an affidavit and the control of
14 the proceedings and the Court record, so I think it
15 is a gray area here and I guess that is where I am
16 ending.

17 THE COURT: I think we have a public
18 record that's been filed. The Court has listened
19 to arguments from all sides. I agree with the case
20 cited by Mr. Bolton that once you have a cocoon
21 that goes into a butterfly, you can't put it back
22 into the cocoon. So it is a public record. But I

1 think that the Court still has a duty to see that
2 the First Amendment is complied with and that is to
3 give the media the basic information as to why this
4 charge is pending. I think there are portions of
5 this affidavit, that there is no legitimate use for
6 the newspaper to have when balancing against the
7 right of the Defendants. This information will
8 come out during trial. There is no harm done to
9 the public in the meantime, and I'm going to order
10 that portions of it be redacted. I would suggest
11 that that be done with both input from the State
12 and the Defense and the balance of that will be
13 turned over to the news media as soon as possible.
14 That is the only thing I can see here. If I had my
15 druthers, I would give the press none of this,
16 because it does nothing except cause possible
17 prejudice in picking a Jury. They will find out
18 about it in due course, but I don't think that the
19 law permits me to take that position. I think that
20 the public records law quite clearly explains this
21 or shows this to be a public record and I don't
22 think the exceptions apply, with all due respect,

1 Mr. Juhasz, I see a difference between this and the
2 argument made in the previous Watkins case. Jerry,
3 you have been awful quiet. That bothers me, but
4 that will be my ruling. I would ask someone from
5 both sides here to get together with this affidavit
6 and go through that and give them that as soon as
7 possible.

8 ATTY. WATKINS: Then the Court will
9 decide if we can't agree.

10 ATTY. BOLTON: Your Honor, may it
11 please the Court, having heard the Court's ruling,
12 it is my understanding that the Court intends that
13 the parties review this affidavit, then submit and
14 ten say, "All right, these are the parts that we
15 would jointly like to be redacted." I would
16 request that the Court, nevertheless exercise its
17 independent judgment.

18 THE COURT: I'm asking them to get a
19 proposal. It will be my call on it, and I'm sure
20 they are not going to agree on all parts. Of
21 course, the original affidavits are a part of the
22 record that will be available for review by the

1 Court of Appeals.

2 ATTY. BOLTON: And the second
3 request I have is that the Court place a deadline,
4 so that the news media, this is a --

5 THE COURT: I would hope by tomorrow
6 morning this could be done, if not today.
7 Wednesday morning. Tell them by mid-morning, if
8 somebody wants to stop here and pick it up.

9 ATTY. WATKINS: I'd like to go on
10 record, once the press leaves.

11 THE COURT: Do you waive the
12 presence of your client?

13 ATTY. CONSOLDANE: Depends on what
14 he's going to say.

15 THE COURT: Waive his presence until
16 we find out?

17 ATTY. CONSOLDANE: Until we find
18 out.

19 ATTY. WATKINS: I will say this that
20 the State is taking the position --

21 ATTY. JUHASZ: We also waive the
22 presence of the Defendant.

1 ATTY. WATKINS: We take the
2 position, looking at the history of affidavits and
3 referring to confessions and to different things
4 that to be consistent, it is our position that the
5 affidavit, as it stands is public record, and we'll
6 participate, but that is our position that the
7 affidavit -- however, I believe that the Exhibits
8 are excludable because that is in my mind evidence.

9 ATTY. CONSOLDANE: How about the
10 drawings?

11 ATTY. WATKINS: I think that the
12 Exhibits themselves, the letters themselves are
13 going to be introduced, however, to go through a
14 journey of picking out what is good and bad in the
15 affidavit for release, which we'll do pursuant to
16 Court order, we would note we would object as a
17 matter of policy.

18 THE COURT: They are not part of the
19 thing. I'm going to order that the Exhibits are
20 not included. That is not to be given to the
21 media. That is evidence.

22 ATTY. WATKINS: I can defend the

1 Exhibits, but I cannot defend the redacting of an
2 affidavit, because there are many in the past and
3 in the future, where we'll be doing this quite a
4 bit.

5 THE COURT: I am looking here this
6 morning and I couldn't see -- there's a whole bunch
7 of evidence that is -- what I was thinking to begin
8 with that should not be in here. I'll make this
9 very simple.

10 ATTY. WATKINS: We have quotes from
11 evidence and there are going to be confessions and
12 motivation, we can't create the scenario here.

13 THE COURT: The affidavit will be
14 given, no attachment. You don't have to redact.
15 (End of in-chamber discussion.)

16

17 IN OPEN COURT AT 12:05 P.M.:

18 Arraignments before Judge Stuard

19 THE COURT: Case number 01-CR-793,
20 State of Ohio versus Donna Roberts.

21 ATTY. INGRAM: This is the
22 Defendant, Donna Roberts. She will acknowledge

1 receipt of the copy of the indictment, she has read
2 the indictment, she's discussed it with counsel.
3 She understands the allegations contained therein,
4 and at this time, she would waive the reading and
5 she would enter a plea of not guilty to each count,
6 and each specification attached to each count.

7 THE COURT: That plea of not guilty
8 is entered for the record. Concerning bond, Mr.
9 Watkins?

10 ATTY. WATKINS: This is a capital
11 offense, where the presumption is great from the
12 evidence contained in the affidavit, no bond should
13 be given. It is the State's position, there should
14 be no bail in this case, and for both cases.

15 ATTY. INGRAM: Donna is 57 years of
16 age. She has no prior criminal record. She has
17 been a resident of Trumbull County for a prolonged
18 period of time. She owns real estate here. Her
19 family resides in this area. And we would
20 accordingly request that the Court set a reasonable
21 bail.

22 THE COURT: I'm not going to set any

1 bail at the present time. I'm going to ask, if you
2 wish to have a pre-trial set now, or if you wish to
3 take care of that. We should have a definite date
4 as to the next step on this. Do you have a date in
5 mind?

6 ATTY. INGRAM: I would suggest 30
7 days. It would be incumbent upon the Defense to
8 request discovery and in order for a pre-trial to
9 be meaningful, we should have some discovery in our
10 possession by the date of pre-trial. 30 days would
11 seem reasonable to me.

12 ATTY. WATKINS: That is fine.

13 THE COURT: I'm going to set this
14 for the afternoon of January 30, which is a
15 Wednesday, and at that time, if need be, we'll
16 revisit the question of bail, but for the time
17 being, there is no bail set.

18 ATTY. INGRAM: Thank you, Your
19 Honor.

20 THE COURT: State of Ohio versus
21 Nathaniel Jackson. Case number 01-CR-794.

22 ATTY. CONSOLDANE: This is Nathaniel

1 Jackson and he's received a copy of his indictment,
2 has read it, and understands the same, including
3 the possible penalties. Waives any further reading
4 in open Court, and would like to enter a plea of
5 not guilty and request that a reasonable bond be
6 set.

7 THE COURT: Pleas of not guilty are
8 entered. Mr. Watkins?

9 ATTY. WATKINS: We make the same
10 recommendation, no bail.

11 THE COURT: There will be no bail
12 set. Pre-trial will be the same date, January 30,
13 2002. There is another matter before the Court,
14 which we have had extensive discussion with all
15 parties, including representatives of the press,
16 and although the Court has ruled that the press
17 cannot intervene in this matter, I did extend the
18 courtesy of allowing their counsel to participate
19 by way of assisting the Court in resolving the
20 matter. The Court sealed the affidavits in this
21 matter, prior to the warrants being issued. That
22 is commonly done. There was a motion by both

1 Defendants at the initial hearing, wherein it was
2 requested the Court not break that seal until
3 further argument had occurred. We had extensive
4 argument from all interested parties this morning,
5 and the Court's resolution is that once the
6 affidavit was filed, it is a public record. There
7 was also, there were also attachments to that
8 affidavit, which the Court has ruled, based on the
9 Sixth Amendment rights of the Defendants, that
10 those will not be unsealed, until they are
11 introduced at trial, and at that time, they will be
12 within the public record domain. The Court is
13 called upon to, at times, balance the Sixth
14 Amendment rights of any particular Defendant
15 against the right of the public to know under the
16 First Amendment. The public will have access by
17 way of the affidavit to all factual matters and
18 content upon which the affidavit was originally
19 filed to get the arrest warrant, and that is my
20 humble attempt to try to rationalize the situation
21 that we are at presently. The media will have an
22 opportunity to pick up a copy of the affidavit this

1 morning, if they wish to wait around, and the Court
2 will have the matter, has the matter set for
3 hearing on January 30, 2002. Everyone have a nice
4 New Year.

5 ATTY. CONSOLDANE: Do you want to
6 pick a date for motions, we are going to need a
7 date for that.

8 THE COURT: I anticipate that
9 discovery will be given. You will get your motions
10 filed within the next two months.

11 ATTY. WATKINS: We'll have to
12 consider speedy trial and evidentiary problems,
13 with a number of witnesses from all over.

14 THE COURT: Let me ask that the
15 parties involved here, get a schedule and submit it
16 to me for approval. We have the overriding problem
17 here.

18 ATTY. WATKINS: I'll talk to both
19 sides. We'll talk to both sides and try to work
20 out a schedule and get back to the Court within a
21 week or so.

22 THE COURT: That is fine.

1 ATTY. CONSOLDANE: Even though I
2 made a lot of my reasons on the record in there, I
3 wanted to make it clear that I am still objecting
4 to the release.

5 THE COURT: All objections are
6 noted.

7 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT OF
8 HEARING)

9 ATTY. WATKINS: The Court at side
10 bar, the Court also included a two page affidavit
11 for a search warrant as being the public record,
12 with the same caveat that none of the letters or
13 Exhibits are to be given for that second affidavit.
14 I am simply clarifying what was discussed at side
15 bar.

16 (COURT IN RECESS)

17

18

19

20

21

22

1 Wednesday, January 23, 2002, In Open Court
2 at 2:00 p.m.:

3 WAIVER OF SPEEDY TRIAL:

4 THE COURT: This matter is before
5 the Court this afternoon after having engaged in
6 pre-trial a discussion with counsel for the State
7 and the Defendant, Mr. Nathaniel Jackson. I
8 understand, Mr. Jackson, that you have talked with
9 your attorneys concerning a waiver of speedy trial,
10 is that correct?

11 THE DEFENDANT: Yes, Sir.

12 THE COURT: This matter would have
13 to be brought to trial by the end of March of this
14 year. That does not allow either side very much
15 time for preparation. It is my understanding from
16 talking to both sides that there's an agreement
17 that the matter would be set over until October 7
18 of this year which would allow sufficient time for
19 both sides to prepare, is that correct?

20 MR. WATKINS: Yes, Sir.

21 THE COURT: You understand that you
22 have a Constitutional and statutory right to have

1 this matter brought to trial within that 90 day
2 period, and that by your agreeing to waive that
3 time period, you are in effect permitting the State
4 to bring this to trial at a later date. You
5 understand that?

6 THE DEFENDANT: Yes, Sir.

7 THE COURT: Is it your wish that I
8 approve that?

9 THE DEFENDANT: Yes, Sir.

10 THE COURT: I have the waiver of
11 speedy trial, which has been duly signed by the
12 Defendant and counsel. This matter will be set for
13 Jury trial on October 7, 2002, which is
14 approximately a 250 day continuance. I'm sorry,
15 October 8th. I'll approve that waiver. We have
16 agreed upon a time for the usual motions that are
17 filed in March and you will -- and do you have a
18 definite date?

19 MR. WATKINS: For the record, I
20 understand that counsel have discussed with the
21 Defendant the waiver of speedy trial and there's a
22 written waiver.

1 MR. LEWIS: Yes.

2 THE COURT: I asked if he talked
3 with his attorneys. They have answered all of your
4 questions, so you know what you are doing here, is
5 that correct?

6 THE DEFENDANT: Yes, Sir.

7 THE COURT: Do you have any
8 questions at all about what you are doing?

9 THE DEFENDANT: No, Sir.

10 MR. CONSOLDANE: We have a motions
11 hearing set for March 20th and a suppression
12 hearing, if needed, set for April 17th.

13 THE COURT: I trust that discovery
14 will take place between both sides. In the
15 meantime you get back here, we'll handle those
16 motions and see where we're at. Anything further
17 before the Court on this matter today?

18 MR. CONSOLDANE: No, Your Honor.

19 MR. WATKINS: No, Your Honor.

20 THE COURT: Thank you all very much.
21 (Court adjourned at 2:03 p.m.)

22

1 Wednesday, March 20, 2002, In Open Court at 9:45 a.m.

2 Hearing on motions:

3 THE COURT: We're here this morning
4 on Case No. 01-CR-794, State of Ohio versus
5 Nathaniel Jackson. There is before the Court 73
6 separate motions, which are to be argued filed by
7 Defendant. Mr. Consoldane, do you wish to address
8 your first motion?

9 MR. CONSOLDANE: Yes, Your Honor.

10 THE COURT: For the record, I'm not
11 going to rule directly on all of these today. I
12 may rule on some of them. Others may be
13 appropriate for me to write an opinion on. Let's
14 proceed.

15 MR. CONSOLDANE: We request that you
16 rule on all of these motions prior to the beginning
17 of trial.

18 THE COURT: The Court will do that.

19 MR. MORROW: Some of them are not
20 appropriate to rule on.

21 THE COURT: Other than those that
22 can't be ruled on until trial or during trial.

1 MR. CONSOLDANE: The first three
2 motions, the motion for Bill of Particulars and the
3 motion for Discovery have been partially complied
4 with by the State, and I don't think they have any
5 objection to you granting those two motions, and I
6 imagine they have always have in the past and will
7 continue to comply with the statute.

8 THE COURT: They are in the process
9 of complying with it.

10 MR. CONSOLDANE: That is correct.
11 And motion number three has already been granted by
12 the Court and we have already employed the use of
13 our mitigation expert.

14 Then coming to motion number four is that
15 we were asking for a comprehensive Voir Dire. We
16 think that that is important in a capital case and
17 we believe that it is necessary to preserve the
18 rights and I believe that the State has filed an
19 answer to that.

20 THE COURT: That will be granted and
21 the Voir Dire will be conducted as we have done in
22 the past cases.

1 MR. WATKINS: For the record, we did
2 file a response and our position is as the Court
3 has indicated, that it be done as in the past. Our
4 concern that the Morgan v. Illinois case, which
5 dealt with a person that is always asking for the
6 death penalty would not be qualified for the case.
7 He or she would not be a fair juror. However, we
8 believe that the gist of the Defense motion
9 suggests that there's an unlimited time period and
10 Ohio law is very clear that this Court has
11 discretion to control the questioning and give wide
12 latitude and we would cite and factor State v.
13 Getsy in dealing of how it should approached.

14 THE COURT: It is without argument,
15 I guess, that the comprehensive has to be
16 determined by the Court. Number five.

17 MR. CONSOLDANE: That is for
18 individual sequestered Voir Dire. In the past,
19 Courts have always agreed to allow us to do it this
20 way and we would like to continue.

21 THE COURT: That will be granted
22 under the guidelines as utilized in the past.

1 Number six.

2 MR. CONSOLDANE: This particular
3 motion we're asking that we be able to have a
4 hearing to determine what experts are going to say
5 before they come into trial.

6 THE COURT: The State's response to
7 that?

8 MR. WATKINS: Looking at number six,
9 we have filed a memorandum in opposition because
10 the basis of the motion is that we should be having
11 a hearing as to admissibility virtually on
12 everything that is going to take place.

13 And looking at 104 and a review of Rule
14 104, would suggest that we would have an in-camera
15 or preliminary hearing dealing with such things as
16 suppression, motion in limine, but not to deal with
17 everything that would be taking place at trial.
18 Obviously we would have a mini trial, if we take a
19 literal interpretation of 104 that all of our
20 evidence, we would have to have a hearing
21 concerning its admissibility.

22 THE COURT: I did not read 104 in

1 that light. I think the proper ruling at this
2 point is that the Court will take the motion under
3 advisement and any portion of the trial that the
4 Defense feels that some sort of in-camera or motion
5 in limine examination be conducted by the Court,
6 then I'll consider it at that appropriate time.

7 MR. CONSOLDANE: Motion number 7 is
8 that all side bar proceedings be recorded.

9 THE COURT: Well, we ran into this
10 in one of our cases prior. I think Dennis was
11 involved in that and it caused some additional work
12 on the appeal because there were some times when
13 somebody approached to say, "I have got to use the
14 bathroom," and we didn't put it on the record what
15 the side bar conversation was. So, the way I'm
16 going to handle this is I'll make every effort to
17 ensure that all side bar conversations are on the
18 record, but it is up to the parties themselves to
19 have an equal responsibility to protect the record.
20 If somebody doesn't get on there, you are on notice
21 that you are doing that at your own jeopardy if you
22 fail to.

1 MR. CONSOLDANE: Also I think that
2 probably we should put on -- a lot of times we
3 approach the bench just for a matter of whether
4 we're going to take a break or go to lunch and it
5 has been the policy in the past to then inform the
6 Court Reporter that that is all we discussed.

7 THE COURT: What I usually have done
8 here since this last case I am referring to is say
9 something to the effect, "Do you waive any
10 recording of the side bar? The side bar was
11 nothing of substance, do you waive the record?"

12 MR. WATKINS: I think that any time
13 that Attorney Consoldane and Attorney Lewis wants
14 it on the record, we go to side bar, it should be
15 incumbent upon them, "We want it on the record,"
16 because if I have something substantive, I'll say,
17 "That is going to be on the record." And I'm sure
18 Attorney Consoldane and Attorney Lewis will do the
19 same. Most of the time when we have these side
20 bars, one side or the other is asking for a break
21 and need to go to the bathroom, it is not
22 consequential. And if it is consequential, I

1 should say it to the Court or the Defense should
2 say it to the Court.

3 THE COURT: Right. I agree. I'll
4 make every effort to make sure that something is
5 placed on the record.

6 MR. CONSOLDANE: Motion number eight
7 is that regarding the Defendant's other acts that
8 we're requesting that the State not be permitted to
9 say anything about his record until such time as
10 the Court rules that that would be admissible.

11 MR. WATKINS: We filed an answer.
12 The exclusion of other evidence is within the
13 discretion of the Court heretofore, and it will be
14 and it is the State's policy, if we intend to go
15 into other acts, other crimes, we'll make a motion
16 or bring it to the attention of the Defense before
17 we would do that at the trial setting. There are a
18 number of situations, for example in this case,
19 that you have the Defendant in prison and making
20 telephone calls dealing with a plan to kill the
21 victim. Obviously the background dealing with the
22 fact that he's under sentence is relevant and

1 material as background information, so it is going
2 to be difficult at this point to deal with all of
3 the possibilities in this case, save and except
4 that the State would as it always has, bring it to
5 the attention of the Court that if we're going to
6 try to go into other acts. Otherwise with
7 discovery, I think Attorney Consoldane and Attorney
8 Lewis would know where we're going and would be
9 able to make their motions at the appropriate time.

10 MR. CONSOLDANE: That is the reason
11 we're making the motion at this time, basically for
12 a motion in limine that they not talk about this
13 during Voir Dire or opening. That will give us a
14 chance, when they get into the case, we can look at
15 what specifically, whether they are going to bring
16 that up and address it.

17 THE COURT: Here's the problem with
18 what you have just said. In the opening statement,
19 if I followed literally what you are asking for,
20 that would mean that the Prosecution would not be
21 able to get into the fact that your client was in
22 prison at the time, that part of this started to

1 develop as according to the theory of their case.

2 MR. CONSOLDANE: If they have
3 recorded and written conversation, where does it
4 matter that it came from at this point in their
5 opening? They don't have to say that it came from
6 prison at that point.

7 THE COURT: I don't know how -- it
8 is a fact, he was in prison. It is a fact that
9 that is something that is not going to be excluded
10 on the basis of other acts. Now if they try to get
11 into why he was in there or something, that is
12 similar to this incident, then that falls within
13 the purview of where we would have to sit down and
14 I would have to make a ruling as to whether I'm
15 going to allow them to have it in. I don't think
16 it extends to the extent that you do and that will
17 be my ruling on it.

18 MR. CONSOLDANE: We want to note our
19 objection for the record.

20 Motion number 9. We have gone through
21 this one before that to prohibit the Prosecution
22 from telling the Jury that a verdict as to death is

1 only a recommendation, that we're objecting to the
2 State being able to tell the Jury that the sentence
3 of death is only a recommendation to the judge.

4 THE COURT: The State's position?

5 MR. WATKINS: This issue has come up
6 repeatedly and the law is that the Jury's role is
7 to recommend an appropriate penalty. I'll agree
8 with the Defense that if the State and a
9 representative of the law would say it is only a
10 recommendation that we would diminish the
11 responsibility of the Jury. We would never do
12 that. That would be something we would not do and
13 I would cite that there's a number of cases dealing
14 with it. Citing the law or representing the law to
15 the Jury, whether it is the Court or the Prosecutor
16 or the Defense is appropriate, if it is represented
17 in a true and legitimate manner. The case that I
18 would cite is State v. Davie, where this issue was
19 litigated and the Supreme Court said it is
20 appropriate to say recommendation, because that is
21 the law.

22 THE COURT: It is the law. It is up

1 to the Judge to instruct on the law, but there are
2 many times where both the Defendant and the
3 Prosecution -- an example is beyond a reasonable
4 doubt. It is not unusual at various portions of
5 the trial, during the opening statement, closing
6 argument for points of law to be given by counsel
7 because they are basic points of law that are very
8 essential to the case.

9 Again, I think it is a matter of degree
10 as counsel points out, if there was some attempt on
11 behalf of either side actually to say, "Well, your
12 job isn't that important." You merely make a
13 recommendation. The Judge has to make the decision
14 there, because that isn't the true content of the
15 law. The Jury decides the recommendation, which as
16 we all know, the Court has to review, and if
17 there's a basis for that recommendation, to accept.
18 The Court has ultimate power to reject that, but it
19 can't be just on the Judge's personal feelings. It
20 has to be on some basis of law. I think we all
21 understand where we're at on that one. I'll grant
22 the motion to the extent of my commentary here.

1 MR. CONSOLDANE: Motion number ten
2 is that we're requesting that the State disclose
3 their rebuttal witnesses. For us to wait until
4 after trial is completed won't give us enough time
5 to properly prepare.

6 MR. WATKINS: Your Honor, in this
7 case, we have provided discovery and a list of
8 witnesses and those witnesses would include the
9 ones that we intend to call on direct and ones that
10 we reasonably anticipate in rebuttal. Obviously we
11 don't know some of the witnesses that any
12 Prosecutor would call or any Plaintiff would call
13 until the Defense would present their side of the
14 case. So, in light of the case of State v. Howard,
15 which is cited in our memo, we'll do our best to
16 follow the law. And I would note that in this
17 case, as we have with others, on a per case basis,
18 we're going to make available three weeks to a
19 month before trial the complete file that the
20 Prosecution has in this case including witness
21 statements.

22 THE COURT: I thank you for that.

1 Makes it a lot easier on my part. In regard to
2 this disclosure of rebuttal witnesses, I think that
3 rule is there for a very good reason, and applies
4 to both sides because things come up during the
5 course of the trial many times that are not
6 anticipated, may require a new person to be brought
7 in to testify, and --

8 MR. CONSOLDANE: I think that is a
9 very cavalier offer by the Prosecutor, but I think
10 that three weeks prior to trial is not really
11 enough time. I mean we need to have that
12 information prior to the three weeks before trial
13 starts.

14 THE COURT: Under Rule 16, they are
15 not required to do that. There's been a movement
16 on behalf of the Prosecution, in my opinion over
17 the last year or so on the more serious cases, to
18 give in effect open file discovery. That avoids a
19 lot of problems that have occurred in the past by
20 way of argument on the defense's side. I think --
21 my opinion is that it is a wise thing for the
22 Prosecution to do and I think that the ends of

1 justice are served much more readily by a full
2 disclosure.

3 As to the time element, I think that that
4 should be sufficient time. If there's some
5 particular reason why it is not, then that should
6 be raised at the appropriate time and I'll deal
7 with it.

8 MR. WATKINS: May I further respond?
9 We have yet to get discovery from the Defense and
10 we have made our motion for reciprocal discovery,
11 and I think that would be part and parcel of
12 providing for information if there's something that
13 they have, that we would know where they are going.

14 THE COURT: Both sides have the
15 option of asking for sanctions if you are not
16 notified under the rules.

17 MR. WATKINS: I just mentioned it to
18 the Court. I think Attorney Consoldane would
19 indicate to the Court, because he's gotten a great
20 deal of information, in fact, letters in this case
21 will probably take a couple of weeks to read. I
22 mean there are tremendous amounts of information

1 received to this point in time.

2 THE COURT: Number 11, motion to
3 suppress.

4 MR. CONSOLDANE: Motion 11 we have
5 continued to a later date, to the 17th of April.

6 Motion number 12, this is basically a
7 motion in limine to prevent the Prosecutor from
8 commenting on things that they shouldn't really be
9 commenting on anyways. Did you even file a
10 response to that? They didn't file a response, I
11 guess they have no objection to that.

12 MR. WATKINS: Let us speak to it.

13 MR. CONSOLDANE: You didn't file an
14 objection.

15 MR. WATKINS: We don't have to
16 necessarily file to each one.

17 MR. CONSOLDANE: I think you ought
18 to just grant it.

19 MR. WATKINS: I think that looking
20 at the motion, we won't make comments on the
21 Defense witness list. I take it Tony is going to
22 follow the same rule, he should not make any

1 comments on the prosecution witness list. The fact
2 that the Defense expert did not produce written
3 reports, that is a problem because we'll be
4 objecting because we're entitled to reports, if
5 they intend to call an expert to the witness stand,
6 which as Tony knows, we very often do not get the
7 report until the time that the witness is
8 testifying, and for example in the mitigation
9 phase, so we object to that part.

10 MR. CONSOLDANE: That is not true.
11 We always provide them with the report as soon as
12 we get it.

13 MR. WATKINS: I obviously, Judge, in
14 all seriousness, we would never comment to the
15 Jury. And I agree, now the cost connected with
16 Defense experts -- when we call an expert, it is
17 proper cross examination to show that the State
18 paid that expert, just as if the Defense produces
19 an expert, it is proper cross examination to show
20 the remuneration that the Defense witness got from
21 the Defense. I think that is appropriate cross
22 examination. So, we would object to that portion.

1 Agree in part and object in part.

2 THE COURT: I agree that it is
3 proper to ask if any expert witness is being
4 compensated and who is paying that. The
5 stipulation, as I understand it here, is that there
6 will be no comments on the Defense witnesses list.
7 The question of whether there was a written report
8 or not, there's a duty to disclose the written
9 expert's report if a report is made. I think that
10 also implies that whoever is getting an expert
11 opinion should make a request that it be delivered
12 prior to trial and in writing and that be
13 delivered. This comes up in several cases all the
14 time where the expert never gets around to writing
15 a report and there's a motion to not allow him to
16 testify. So that can be avoided by having the
17 expert give a report. Quite often, they are very
18 summary reports and some idea of what their
19 testimony will be. Number 13?

20 MR. CONSOLDANE: We would request
21 that the State make sure that all evidence gathered
22 in this case is properly preserved and cataloged.

1 They have a habit of just preserving the evidence
2 that is favorable to them and not -- and there may
3 be something that may be of either mitigating
4 factor or exculpatory in nature and it gets buried
5 because the police don't turn it over to anybody.
6 All of that stuff should be cataloged.

7 MR. WATKINS: This motion should
8 be -- we oppose it and should be denied. It is
9 pure speculation. There's no factual basis that
10 we're not going to properly preserve evidence or
11 that we're going to purposely destroy or do
12 anything to the evidence. The fact of the matter,
13 common sense would tell everyone that if we were
14 involved with some plan, it would never be
15 cataloged, it would never be found. And in this
16 particular case, as with all cases that I am going
17 to be involved in or Chuck or my office, we're
18 going to do our damnest to have everything
19 available for the Defense or the Court, depending
20 on for example, Grand Jury testimony. We want to
21 have a fair trial.

22 THE COURT: I trust that that is

1 true on all parties' behalf. Mr. Consoldane has
2 merely recited an urban legend that is among
3 Defense lawyers and that is that the State hides
4 and does not present Brady material.

5 MR. CONSOLDANE: It is not legend.
6 I have seen it happen.

7 THE COURT: There are times, I'm
8 sure in the past, particularly in other
9 jurisdictions where that has occurred. There's
10 case law that shows that. There's a duty here on
11 behalf of the State, which I need not go over, but
12 I will request for the record that they collect,
13 catalogue and preserve all information. This Court
14 has previously ruled on another case that is Brady
15 plus material and I feel confident that the
16 Prosecution will do that. If Defense has any
17 suspicion otherwise, that should be brought to my
18 attention.

19 MR. CONSOLDANE: The motion number
20 14 requests that Mr. Jackson be allowed to appear
21 in all Court proceedings in civilian clothes.

22 THE COURT: There should be no

1 argument about that.

2 MR. WATKINS: For example, today is
3 not in my opinion necessary. The jail has its own
4 procedure. Certainly during any trial setting --

5 THE COURT: Any time he has a chance
6 of appearing before the Jury.

7 MR. WATKINS: I agree.

8 THE COURT: Some hearing that the
9 Jury is not part of, then there's no necessity to
10 that.

11 MR. CONSOLDANE: Motion number 15 is
12 a motion in limine to prohibit the State from
13 displaying Exhibits before they have been admitted
14 into evidence.

15 THE COURT: I don't understand that
16 motion. You mean before they are admitted?

17 MR. CONSOLDANE: Yes, to show them
18 to the Jury before they have been admitted into
19 evidence.

20 THE COURT: Now this comes up all
21 the time in both civil and criminal cases. Many
22 times during the examination, there may be a

1 photograph, it is proper if whoever is doing the
2 inquiry with the Jury, if they feel it is important
3 at that point that the Jury see the photograph,
4 proper procedure is to request of the Court, "Can I
5 introduce this or show this?" That gives the other
6 side an opportunity to object. If there's an
7 objection, then I'll have to make a ruling on it
8 and probably have a side bar.

9 MR. CONSOLDANE: What we have done
10 in the past, if they are just going through the
11 photographs, is that they identify them without
12 showing them to the Jury, but in cases where they
13 have to use a visual aid or a video tape or
14 something, that the Court review it first and make
15 a decision as to whether or not the Jury can see
16 it.

17 THE COURT: You get into the
18 questions about repetition, whether it is, the
19 value may be outweighed of its evidentiary value by
20 the shock value. Those are items. That is the
21 reason by following the procedure, I am suggesting
22 the other side has an opportunity to object. No

1 one should show any evidence of that nature to the
2 Jury without having approval beforehand.

3 MR. WATKINS: Your Honor, we go
4 through this every time and I can't think, I'm sure
5 Attorney Consoldane can think back, when it comes
6 to photographs, we always instruct the witnesses to
7 keep the photographs to themselves. When it comes
8 to the audio -- well, audio, video and the slides.
9 We have an in-camera. This is a matter of course.
10 The Prosecution will never intend or make any
11 effort to show photographs without a prior ruling.
12 The thing that we object to and put on notice to
13 the Court and Attorney Consoldane, is that in this
14 case as with major cases, we'll bring in packages
15 in the Courtroom, for example of clothing or other
16 items, that we'll be bringing in the Courtroom
17 before we give it to our witness and the Jury
18 obviously is going to see a package or clothing.

19 THE COURT: That is one of the
20 reasons for discovery. He's going to be aware of
21 what those items are.

22 MR. WATKINS: You can't keep that

1 out, for the fluency of the trial, for continuity
2 of the trial and to get through these things. Our
3 police officer prepared and marked some things, so
4 the Jury is going to see some of them before it is
5 admitted.

6 THE COURT: If he thinks there's
7 something the Jury should not see, he has the right
8 to object. I think the motion goes primarily to
9 charts you may have prepared, pictures of the scene
10 or whatever.

11 MR. CONSOLDANE: And power point.

12 THE COURT: That is a whole
13 different area. We'll get into that.

14 MR. WATKINS: We have never had a
15 problem with a reversible error or even a strong
16 objection that I can remember dealing with this
17 issue.

18 THE COURT: It would be rather
19 insane on behalf of the Prosecution to do something
20 of that nature because all you are doing is putting
21 error in the record. I have never seen the
22 Prosecution engage in that. I have seen it in

1 several trials, but not in the criminal.

2 MR. CONSOLDANE: The motion number
3 16 is that we're requesting disclosure of any
4 agreements, benefits, deals involving any of their
5 witnesses. You don't object to that, do you?

6 MR. WATKINS: I would indicate --
7 there's only one witness that I can think of where
8 that may be involved, and it is Santiago Mason,
9 which we'll discuss with you as the case was
10 dismissed by another Court, but it dealt with
11 cooperation and he would be a witness in this case,
12 and we'll discuss that with Defense counsel. But
13 as far as any deal that we make by way of plea
14 bargain, we would absolutely give it to the
15 Defense.

16 THE COURT: I think that it is only
17 proper for purposes of cross examination, primarily
18 if there's some agreement between the Prosecution
19 and any witness called, that that should be
20 disclosed and I would expect that that be done.

21 MR. CONSOLDANE: 17, the disclosure
22 of witness statements prior to trial. This speeds

1 up the trial. It doesn't clog it down. I guess
2 that Dennis has already agreed to show us the
3 statements.

4 THE COURT: He's agreed to open
5 file.

6 MR. WATKINS: Just as the last
7 couple you have gotten.

8 MR. CONSOLDANE: Some of the
9 statements, the last death penalty I tried, I
10 didn't get them until we already started trial.

11 MR. WATKINS: Which one?

12 MR. CONSOLDANE: Stanley Adams.

13 MR. WATKINS: That open file took
14 place close to trial. It is true, but the last
15 couple that I have been involved in, you weren't
16 involved with the last one, we gave plenty of time.
17 This case, you will get them.

18 MR. CONSOLDANE: 18 is kind of a
19 housekeeping motion that we're asking the time to
20 be extended to file motions that we have got two
21 death penalty cases plus a multiple murder.
22 There's some time limits for motions, being that

1 this case is set off until October, that you grant
2 us a little extra time to file motions that we deem
3 that might be necessary.

4 THE COURT: With the exception of
5 motions to suppress and possibly motion of alibi,
6 the Court would tend to be liberal on its extension
7 of any times. I don't know of any substantive time
8 periods that we're talking about. There may be
9 some, but I think the motion to suppress should be
10 filed well in advance of trial.

11 MR. CONSOLDANE: We already have
12 filed that.

13 THE COURT: And even notice of alibi
14 would have to be under the statute. Any objection
15 to that?

16 MR. WATKINS: I think that you hit
17 the nail on the head as far as our position is
18 concerned. October date, October 8th is the trial
19 date, and I could see that there could be a
20 situation where they may have to file a motion with
21 reasonable causes beyond a deadline, but I think
22 that there should be at least a pretty steadfast

1 rule that sometime in the Summer, there wouldn't be
2 motions filed in this case unless there's good
3 cause, because otherwise, I don't think we should
4 be going through suppression hearings in September
5 when we have other cases and you have other cases,
6 when we can get that out of the way within a
7 reasonable period of time. And there's been plenty
8 of time given to the Defense in this case.

9 MR. CONSOLDANE: Your Honor, the
10 problem with that is that they are not going to
11 give us open file discovery until three weeks prior
12 to trial. Something may come up.

13 MR. WATKINS: And then you have
14 reasonable cause. I wouldn't disagree with that.

15 MR. CONSOLDANE: Motion 19, they
16 have not filed an answer to and I guess they don't
17 have any objection that we get the transcripts of
18 the proceedings before the Grand Jury.

19 MR. WATKINS: We did file a
20 response. You just didn't read it.

21 MR. CONSOLDANE: I don't have it.

22 MR. WATKINS: Did you lose it? It

1 was just filed yesterday.

2 MR. CONSOLDANE: You didn't give me
3 that one.

4 MR. WATKINS: The Grand Jury
5 testimony is by rule and the law not disclosed
6 unless there's particularized need and that is our
7 position.

8 THE COURT: The law has a long
9 history of holding that sacrosanct and unless
10 there's some particularized need shown on behalf of
11 the Defendant after hearing, that secrecy will not
12 be violated.

13 MR. CONSOLDANE: Motion number 20 is
14 we're requesting that the jurors be sequestered
15 during the trial. We believe that that is
16 necessary, that the newspapers tend to bring too
17 much stuff in the papers, even though the Court
18 instructs the jurors not to watch T.V. or read the
19 newspapers, it has been my experience, I found that
20 this inadvertently does happen.

21 THE COURT: The State?

22 MR. WATKINS: Your Honor, it has

1 never happened to my knowledge anywhere in the
2 State and none of our capital cases where the Jury,
3 for a lot of good policy reasons, would be
4 sequestered from beginning to the end of the trial.
5 So we object.

6 THE COURT: There's a very strong
7 presumption that the jurors follow the admonition
8 given. My experience and I think probably the
9 experience of counsel here that that seems to be a
10 duty that they take as a sacred trust. I think
11 that the sequestration of jurors is proper, once
12 the case has been delivered to them, because there
13 should be nothing to interfere with the total
14 concentration on the case. It is enough of an
15 imposition on jurors to bring them in here and have
16 them sit for weeks at a time, and to deny them the
17 ability to go home in the evenings, I think adds
18 nothing to them doing their job, and I find no
19 reason to vary the past practice. So, the motion
20 to sequester during the entire duration of the
21 trial will be denied. They will be sequestered
22 upon having the case delivered to them for

1 determination.

2 MR. CONSOLDANE: Motion 21 is that
3 we be allowed to permit, be permitted to introduce
4 all relevant evidence at the mitigation phase and
5 not just be confined to what is listed in the
6 statutory reasons.

7 MR. WATKINS: Your Honor, I think
8 our response citing State vs. Depew is still the
9 law in the State of Ohio that the question of
10 relevancy and materiality is a question of law for
11 the Court to decide on an ad hoc basis during that
12 phase, and the motion infusions with the idea that
13 they decide what is relevant and not the Court, and
14 that is not the law. The Court decides what is
15 relevant and material.

16 THE COURT: I think any evidence
17 presented to the Jury has to be relevant. That has
18 to be within the province of the Court to decide.
19 I think if you get to the mitigation phase, then
20 the defense has a right to present anything they
21 feel is proper. If the Prosecution feels something
22 is being raised that is improper, then they have

1 the right to object to it. The Court has the last
2 word on it.

3 MR. CONSOLDANE: That motion granted
4 or denied?

5 THE COURT: The Court will permit
6 the Defense to admit all relevant and material
7 evidence according to law at the mitigation phase.

8 MR. WATKINS: Granted to the extent
9 that the relevant evidence is determined by the
10 Court to be relevant and material at the time.

11 THE COURT: Yes.

12 MR. CONSOLDANE: Motion number 22 is
13 that we --

14 THE COURT: Let me say one thing.
15 In that mitigation, you get to that phase, I think
16 there's a tendency on all Courts to be rather
17 liberal. But it doesn't mean that there aren't
18 limits to it, because there are, and if objected
19 to, then that is when the Court has to make the
20 call.

21 MR. CONSOLDANE: Motion number 22 is
22 that we request that the Court instruct the Jury to

1 articulate the method by which they weigh the
2 aggravating circumstances, aggravating factors
3 against the mitigating circumstances.

4 MR. WATKINS: We object and feel
5 that the present system works.

6 THE COURT: That is not required or
7 permitted by law.

8 MR. WATKINS: That was recently
9 argued in State vs. Green.

10 THE COURT: That motion will be
11 denied.

12 MR. CONSOLDANE: Motion 23 is that
13 in regard to the instruction by the Court in
14 regards to any remaining doubt about guilt and
15 mercy as to mitigating factors, to be included in
16 the instructions by the Court.

17 MR. WATKINS: It is residual doubt.

18 THE COURT: What is the State's
19 position?

20 MR. WATKINS: It is clear that
21 the -- there's no instruction required dealing with
22 the theory of residual doubt or mercy. It is in

1 fact, there's two recent cases dealing with this
2 issue. It has been decided by this Court and
3 others. State vs. Green, 90 Oh. State 3rd, it's a
4 case and they note sympathy instruction, which has
5 been upheld repeatedly, most recently by State vs.
6 O'Neil. It is a 2000 case. The law has not
7 changed. It has been upheld many, many times.

8 THE COURT: My view is that it is
9 proper for the Court to give the instructions that
10 prejudice, sympathy -- prejudice, bias is not to be
11 utilized in making their decision. Inherent in the
12 entire process is the ability, if not the right of
13 a Jury to take into account, mercy in making their
14 determination, but the law does not instruct them
15 to consider that. And I think it would be
16 improper, that is one of the things where the Jury
17 has the right to nullify what the law actually is,
18 if they are so inclined. They are not to be
19 apprised of that fact, however. That motion will
20 be denied.

21 MR. CONSOLDANE: Motion 24 to limit
22 the State's arguments at mitigation to the

1 aggravating circumstances proven at trial. Those
2 have already been proven to the Court. In other
3 words, if you get there, that those aggravating
4 circumstances should not be able to be argued again
5 by the Court. They have already been proven at
6 trial, the first phase to get that, and they are
7 just -- it would be unfair to allow them to argue
8 that again and there's quite an extensive motion
9 that requests that the Court review that and the
10 case law in regard to that.

11 MR. WATKINS: Your Honor, I would
12 indicate -- well, we have covered at least two,
13 this is precocious in the sense that we're making
14 the rulings before we have gotten to this
15 Defendant's conviction. This presupposes that the
16 Defendant is going to be convicted of capital
17 murder, and some of the Courts have continued these
18 types of motions until the appropriate time.
19 Though we have briefed it, I would bring that to
20 the Court's attention, and I would ask the Court --

21 THE COURT: The motion, as several
22 of these, is a bit premature at this point. This

1 is one of the motions that is regularly raised in
2 capital cases. I find no fault with the
3 Prosecution's suggestions here that if we get to
4 that point, then we can have a motion in limine and
5 review. I would just say as a general statement
6 that the State will spend two to three weeks in
7 presenting the case. It would be of little benefit
8 on behalf of the State to retry the case in the
9 mitigation phase, and I have never seen that done.
10 I think that what the Defense is trying to
11 accomplish here is to have some kind of a bar on
12 mentioning any of the underlying facts in arguing
13 the aggravating circumstances. I think that is
14 virtually impossible to do.

15 MR. WATKINS: And Davie and Getsy,
16 it shouldn't be done.

17 THE COURT: I think it is again a
18 matter of degree and discretion on behalf of the
19 Prosecution, to not go beyond that magical line
20 where you get into impropriety. I trust, since
21 this case is in such able hands on behalf of the
22 Prosecution, that won't occur.

1 MR. WATKINS: Your ruling on it at
2 this time?

3 THE COURT: I'll withhold the
4 ruling.

5 MR. CONSOLDANE: Motion 25 is that
6 request that the State not be allowed to comment on
7 the Defendant's unsworn statement.

8 MR. WATKINS: You are going to
9 continue that one, too?

10 MR. CONSOLDANE: I think they are
11 not allowed to do that anyway.

12 THE COURT: He's not allowed to do
13 that and the Prosecutor is not allowed to do that,
14 but I don't know that that again is without
15 limitations.

16 MR. WATKINS: We're prepared to
17 argue that. It is very clear that we're allowed to
18 bring to the attention of the Jury that the
19 Defendant has not taken the witness stand and has
20 not been subject to cross examination. That is
21 what we're allowed to do, if he gives an unsworn
22 statement.

1 THE COURT: In regard to the
2 mitigation phase?

3 MR. WATKINS: Yes, but again we're
4 presupposing we're going to get there.

5 THE COURT: I'll withhold ruling on
6 that, also.

7 MR. CONSOLDANE: Number 26 is to
8 allow a second Voir Dire of the Jury if the
9 Defendant is found guilty in the trial phase and to
10 allow us to -- at that point if the Jurors say they
11 returned an automatic death penalty that at that
12 time, he should be excused and replaced by one of
13 the alternates.

14 MR. WATKINS: This again is
15 premature, but there's no case that I know where
16 there's been a second Voir Dire granted. There's
17 numerous cases, the Supreme Court saying there's no
18 second Voir Dire between stages.

19 MR. CONSOLDANE: There's been times
20 throughout trial where Voir Dire of the Jury
21 becomes necessary.

22 MR. WATKINS: I agree with that, if

1 something comes up that requires the Voir Dire. It
2 was done in Stanley Adams. I agree. Your motion
3 is that there should be Voir Dire for the second
4 stage and there isn't.

5 THE COURT: Barring something
6 happening as just mentioned, common law, there was
7 no mitigation phase. You had a trial and the Jury
8 made its decision. We have this bifurcated trial,
9 which is merely a creature of statute. This Court
10 will take the position that the statute is to be
11 followed. If you have any remedy, it is won on
12 appeal if he's convicted of anything, arguing some
13 violation of due process. But the statutory rule
14 says it is to be handled in the manner in which you
15 have handled it in the past. That does not take
16 into account second Voir Dire. So the Court would
17 overrule that motion.

18 Something may come up where something
19 happened in between, where it would be legitimate
20 for you to raise the issue again, but at this point
21 in time saying we're going to go against the
22 statute, I'm not willing to do that. There's no

1 basis for it.

2 MR. CONSOLDANE: Your Honor, the
3 only thing is that during the trial, they may
4 become so presupposed to the death penalty, we
5 ought to be able to find that out. In other words,
6 if some people may say the evidence was just too
7 overwhelming that I can't consider anything but the
8 death penalty and thus they become an unfair juror.

9 THE COURT: One or more of the
10 jurors may say during the course of the trial, "I
11 don't like those Prosecutors, they are a bunch of
12 SOB's." That doesn't give them the right to come
13 in and ask for a Voir Dire.

14 MR. CONSOLDANE: That has happened
15 in the past.

16 THE COURT: Let's go on.

17 MR. CONSOLDANE: Number 27, motion
18 to allow the full statement of Defense objections
19 at trial and to require a statement of reasonable
20 ruling that we be allowed to put our entire
21 objection on the record and for the Court to
22 completely rule on our objections.

1 THE COURT: Well, without hearing
2 argument of the State, unless it is something that
3 is very apparent like a hearsay objection or
4 something, I'll usually ask you what your objection
5 is. If it is going to be something that is of
6 substance, again it would be side bar on the
7 record. The Court would then be called upon to
8 place on the record the reason for any judgment I
9 would make on the motion. That is granted. Do you
10 have any objection to that?

11 MR. WATKINS: My suggestion would be
12 that the wording of the ruling would be that as we
13 know, during trial I may object. You are going to
14 say overruled and we just go on. If there is on
15 either side the inclination or the desire to have
16 it on the record, it should be incumbent on either
17 side to have the reasons in the record.

18 THE COURT: That is a good point and
19 it goes with what I said at the beginning, unless
20 it is something that is very apparent, since we're
21 trying to have a total complete record here, let me
22 make the understanding at this point, that I may

1 think that something is very run of the mill. You
2 may have a different point from your position. If
3 there's an objection made and I grant it without
4 comment, if you want something on the record, it is
5 your duty to raise the issue at that point, so we
6 can do so. I'll extend that courtesy at any time
7 during the trial.

8 MR. WATKINS: That would be in a
9 journal, so down the road if it isn't in there, you
10 won't have an order saying you had to do it on your
11 own in every situation. It should be incumbent on
12 the parties.

13 THE COURT: It is incumbent on both
14 sides if you want some motion preserved.

15 MR. WATKINS: We're going to draft a
16 judgment entry.

17 THE COURT: Okay.

18 MR. CONSOLDANE: Number 28. We
19 request that from now on all pre-trial hearings be
20 closed so that we don't taint the Jury pool. That
21 will be included in the motion to suppress. I see
22 the State has not filed a response to that.

1 MR. WATKINS: Yes, we did. We filed
2 a response.

3 MR. LEWIS: It was filed yesterday.

4 MR. CONSOLDANE: It is kind of
5 unfair for them to file responses the day before
6 the hearing. I object to that. They have had
7 plenty of time to file these. You are objecting to
8 having the pre-trial hearings closed?

9 MR. WATKINS: Yes, I think that the
10 law is clear and that goes all the way back to
11 Danny Lee Hill that the closure of the Courtroom to
12 the public is not to be done unless there's
13 extraordinary circumstances.

14 THE COURT: It has to be something
15 of extreme danger to somebody involved or whatever.
16 The Defendant has a right to a public trial, and I
17 think you will find numerous cases that say that
18 that is a right also of the public to be able to be
19 present at a public trial.

20 MR. CONSOLDANE: We agree with that,
21 that they have a right to a public trial, but these
22 hearings prior to the trial starting is just a

1 means that the Prosecution used to taint the Jury
2 pool. We think that that is unfair.

3 THE COURT: I disagree with that
4 from this standpoint. It is conflict of the First
5 and Sixth Amendment, if the newspapers choose to be
6 here and print something about it, that is not at
7 the Prosecution's request. It may work to their
8 benefit, but that is the reason you have the
9 safeguard of the Voir Dire. And if you cannot pick
10 a Jury that is not tainted, then you have the right
11 to have a motion for change of venue.

12 MR. CONSOLDANE: Number 29 is motion
13 to exclude the photographs of the decedent. A lot
14 of times the State introduces these photographs
15 just to inflame the Jury, and that their probative
16 value is far outweighed by the --

17 THE COURT: That is something I'll
18 take under advisement and the Court always reviews
19 the photographs of that nature and makes a
20 determination prior to submission to the Jury.

21 MR. WATKINS: Your Honor, it is case
22 law throughout Ohio, in State vs. Davie is the one

1 where we had gruesome photographs. If they are
2 relevant and material, a combination of evidence is
3 admissible, which would include slides, videos and
4 photographs, so long as the Court would rule on the
5 relevancy of photographs of the decedent to make
6 sure that they are first, relevant and material and
7 secondly, it is not repetitive. We would expect
8 the Court to follow that procedure and that is our
9 position.

10 THE COURT: The Court will endeavor
11 to do that at the appropriate time.

12 MR. CONSOLDANE: Motion number 30 is
13 we're requesting the Court to order that the
14 employees of the Sheriff's Department and the
15 Prosecutor's office and other peripheral people
16 over there at the jail not be allowed to discuss
17 this case with Mr. Jackson. He has retained
18 counsel at this time or has counsel at this time
19 and it would not be fair for them to discuss it
20 without us being there.

21 MR. WATKINS: The State, in its
22 response, cites the disciplinary rules. We

1 absolutely cannot and will not communicate with
2 this Defendant for obvious reasons. It is
3 inappropriate. However, this order which is
4 requesting, would suggest that the Defendant, if he
5 chose to contact the policeman or the press or
6 whoever, that he couldn't do so. That there be
7 some orders excluding the parties that aren't
8 participants in this trial and it is our position
9 that there's not even a service here to have
10 restraining orders as to parties, and that the best
11 method here is for the attorney representing the
12 Defendant to tell him not to talk to anyone.

13 THE COURT: That came to mind. I
14 think that, I'm sure that Mr. Consoldane has
15 informed Mr. Jackson that he should not discuss
16 anything about this case with anyone other than
17 through his counsel. I would find it difficult to
18 understand why any deputy would try to solicit
19 information from Mr. Jackson. And I trust that the
20 Prosecutor probably has forwarned these gentlemen
21 in the past on every case.

22 MR. WATKINS: It is inadmissible, if

1 he would voluntarily do it, then it is admissible.

2 THE COURT: Yes. It is a question
3 of whether, if something should arise, who
4 initiated the contacts or whatever. But I'll go so
5 far to say to rule that no one should attempt to
6 obtain information, no one in the position of
7 authority should attempt to obtain information from
8 Mr. Jackson without his counsel being present.
9 Mr. Jackson chooses to speak with somebody
10 voluntarily, that is another matter. We'll have to
11 deal with that if it should arise.

12 MR. CONSOLDANE: Motion 31 is that
13 we're requesting that the Court order the Sheriff's
14 department in transporting Mr. Jackson back and
15 forth to Court while trial is being conducted, that
16 they not allow him to appear in front of the Jury
17 with shackles on.

18 THE COURT: Dennis?

19 MR. WATKINS: The Sheriff's
20 department does an excellent job in transporting
21 the prisoners to and from the Courtroom. There's
22 been always an effort to make sure that it is not

1 done in front of the Jury, but there are going to
2 be occasions possibly where that could occur.

3 THE COURT: We had occasions where
4 it occurred and after investigation, found out to
5 be situations could not be avoided.

6 MR. WATKINS: They know he's in
7 custody. So it is not a big deal in my opinion,
8 unless there's some intentional part on the part of
9 the officers to do these things in front of the
10 Jury.

11 THE COURT: The Jury is going to
12 know after a very short period of time that the
13 Defendant is in custody. I agree that every effort
14 should be made to not cause the added burden on the
15 Defendant of having provision of him being shackled
16 presented to the Jury. The officers are well aware
17 of that. I expect that they will make every
18 attempt to see that that doesn't occur. But the
19 primary reason for the shackling is for the safety
20 of the Defendant, the safety of others. And I also
21 expect that the deputies will do their job with the
22 thought of safety in mind as the primary account.

1 It is kind of a secondary thing about not having
2 him shackled in front of the Jury. I think that
3 everyone is cognizant of the bad appearance that
4 makes and the added burden put on the Defendant.
5 No matter what anyone does, no one is going to
6 attempt to cause him undue grief in that regard.
7 Now if something occurs where Defense counsel
8 thinks that that general rule is being violated,
9 then I think it is your duty to put that on the
10 record to address the Court about it, and we'll try
11 to see where we're at.

12 MR. CONSOLDANE: Just trying to
13 prevent the possibility of a mistrial and I think
14 that if the Court would order this to the Sheriff's
15 department, that they will comply within the
16 parameters. They brought him up here, normally
17 what they have done, they have brought him over
18 while the Jury is still secluded in another room.
19 Brought him up here, take the shackles off, that
20 when the Jury comes in, that they don't have to do
21 that without the order from the Court, instructing
22 them to do that --

1 THE COURT: I have done it both
2 ways. I have no problem with ordering them to do
3 that, it is just that I'll not allow the Defense to
4 take advantage of that, if something occurs that
5 could not be avoided, and that I know is the whole
6 purpose or one of the purposes of your motion.

7 MR. CONSOLDANE: Circumstances
8 always arise at trial, I understand that.

9 THE COURT: It is always a question
10 of degree and the question of propriety. We all
11 deal with this issue on many different levels and
12 many different times, and my experience has never
13 been that the deputies tried to embarrass a
14 Defendant in regard to the shackles. I can put
15 that into the ruling, that whenever it is possible,
16 keeping the ultimate question of safety in mind,
17 that the Defendant need not be shackled,
18 particularly in view of the Jury, and the Sheriff's
19 department is to comply with that.

20 MR. CONSOLDANE: Thank you. Motion
21 32. It is a motion that we would request the Court
22 order that the news media not be allowed to film,

1 photograph or video tape Mr. Jackson while he's in
2 the Courtroom.

3 MR. WATKINS: It is very clear that
4 he's a party. He can be photographed and video
5 taped, recorded, pursuant to the Rules of
6 Superintendence, however, if he chooses to take the
7 witness stand and becomes a witness, then he can
8 say, at this time --

9 THE COURT: That is pretty clear
10 under the Rules of Superintendence that again, the
11 First Amendment, the right of public trial, that
12 they have a right to photograph everyone except the
13 jurors, and any person who is testifying that
14 expresses a desire not to be photographed. That
15 also covers the Defendant when he takes the stand
16 if he should do so.

17 MR. CONSOLDANE: Motion 33, I think
18 it is a long time coming, I believe I requested the
19 Court raise the bar to require the State to have
20 the burden of proof of beyond all doubt in both the
21 trial and the sentencing phase. This is a very
22 serious matter and --

1 THE COURT: Do you have some case
2 law on that?

3 MR. CONSOLDANE: Well, there is
4 attached to the motion, but I think it is more than
5 that, I think the time has arrived in the death
6 penalty cases that this standard ought to be
7 adhered to.

8 MR. WATKINS: Your Honor, in our
9 brief we cited several cases, including Jenkins,
10 that there's no requirements that the State prove
11 its case beyond all doubt. In fact, I'll tell the
12 Court and I'll tell counsel that I think it is
13 almost an impossibility to prove anything beyond
14 all doubt and that would mean more freedom for many
15 more Defendants, just as a matter of law. And our
16 legislature, in defining our requirements in Ohio,
17 as with all of the States, require in different
18 ways for the Government to prove beyond a
19 reasonable doubt a person's guilt, and to prove
20 beyond all doubt is an insurmountable burden in
21 most instances.

22 MR. LEWIS: A specialized

1 proceeding. They are attempting to try to take
2 somebody's life in these proceedings. I believe --

3 THE COURT: I agree there can't be
4 anything more serious that we handle, but the law
5 deals in concepts of the words. The statute on
6 beyond a reasonable doubt deals with moral
7 certainty. It is the highest burden placed at law
8 upon any party to prove, to require the burden of
9 beyond all doubt is to get into the metaphysical
10 perhaps and I think moral certainty is about as far
11 into that area as you are going to get. I know of
12 no case that has said that the standard questioning
13 is beyond all doubt is appropriate and quite
14 clearly it is not appropriate under the State of
15 the law. That motion will be denied.

16 MR. CONSOLDANE: Number 34 is that
17 we request that all motions be heard on the record.

18 MR. WATKINS: I have no objection.
19 I think that the proviso should be that if we're
20 off the record that again it is incumbent upon the
21 Defendant to come forward and say, "We want to be
22 on the record."

1 THE COURT: We have all been through
2 this numerous times in other cases. There will be
3 something by way of a brief motion, that I'm sure
4 will not be transcribed because of no request being
5 made to Mary Ann, and it is going to appear on the
6 record -- well, what was the motion on appeal?
7 Again, so that there's no question, anyone who has
8 a motion at any time, it is incumbent upon you, if
9 you wish to have it preserved by way of record.

10 MR. CONSOLDANE: Motion 35 is that
11 we request for the Court to rule on all motions
12 prior to the commencement of trial. I understand
13 that you reserved some of the motions.

14 THE COURT: Some of it is impossible
15 to rule on. All motions that can be appropriately
16 ruled on prior to trial will be done.

17 MR. CONSOLDANE: Number 26 is for
18 having transcripts, that it may be necessary that
19 we have daily transcripts of the proceedings and be
20 able to properly defend our client.

21 MR. WATKINS: I'll let Mary Ann
22 answer that.

1 MR. CONSOLDANE: I object. I don't
2 think Mary Ann would have any objection to that.

3 MR. WATKINS: We object to that.
4 This is a matter of practicalities of trial.

5 THE COURT: I'll not grant that as a
6 blanket rule. I'll say that there are times, many
7 times during a lot of trials that a certain portion
8 of the record may need to be typed, that usually is
9 not more than a couple of pages. And if anyone
10 finds that they are in a situation like that, I'll
11 entertain a motion, of course, to provide that for
12 them. The motion is overruled with the exception
13 of being brought to the Court's attention on a
14 specific matter.

15 MR. CONSOLDANE: Motion 37 is that
16 we feel that we should have an increase in the
17 number of peremptory challenges for the Defense.
18 This, the legislature has already allowed for extra
19 preematory challenges, and so that is not unheard
20 of, and I think that in particular in this case
21 that we ought to be granted more than the present
22 number allows.

1 THE COURT: How many would you
2 suggest?

3 MR. CONSOLDANE: 24.

4 MR. WATKINS: The case law is very
5 clear that Criminal Rule 24(C) is Constitutional
6 and the six is sufficient. It is cited in our
7 Memorandum in opposition. Obviously to increase
8 the challenges from 6 to 24 would increase the time
9 of Voir Dire about fourfold. That would hamstring
10 the administration of justice to go through each
11 case.

12 THE COURT: I find no reason -- I
13 think from the history, you are allowed more in
14 this type of case, and if you had 24 or 48, it
15 makes no difference other than the time involved.
16 The statutory amount or the rule amounts is more
17 than sufficient in my opinion to allow both sides
18 to clear the Jury of anyone who you feel is
19 inappropriate. And --

20 MR. WATKINS: You have cause
21 anyways.

22 THE COURT: You always have cause.

1 I'll overrule motion number 37.

2 MR. CONSOLDANE: Motion number 38 is
3 that we request for alternating Voir Dire. There's
4 no reason to deny this. It is just a matter of
5 fairness, rather than allowing them to go first all
6 the time, that we can alternate. They go first and
7 then we go first with the next one.

8 MR. MORROW: I would note that the
9 practice has been established that the State
10 proceed first in all Voir Dire. Furthermore in
11 response, we talk about the case that allows the
12 procedure as has been practiced.

13 THE COURT: The law is evolved in
14 the manner that the burden of proof is on the
15 State. Technically as we all know, the Defendant
16 need do nothing. The things have evolved through
17 many years and there's a set pattern, it doesn't
18 mean it can't be varied, but it should only be
19 varied for some very good reason. The State goes
20 first, the State goes last, in this or any other
21 criminal trial. The argument is based on the fact
22 that you perceive some violation -- it has to be

1 perceived on some fact. Perceive some violation of
2 due process.

3 MR. CONSOLDANE: They go first in
4 the trial. We're talking about the Voir Dire.

5 THE COURT: It is the way it works
6 in every other trial.

7 MR. CONSOLDANE: There's no burden
8 of proof in the Voir Dire.

9 THE COURT: I understand. I'm
10 saying that because they have the burden of proof,
11 they have always traditionally gone first, and
12 last. They have a very heavy burden of proof, and
13 you can't argue procedural due process because it
14 has always been done this way. You have to argue
15 substantive due processes and I have heard no
16 argument. I see nothing in your pleadings raising
17 a substantive due process argument.

18 MR. LEWIS: The Memorandum really
19 directs itself to the idea that the Prosecutor once
20 they start the Voir Dire, and let's put it this
21 way. In a capital case, we have eliminated
22 everybody that has basically qualms against the

1 death penalty. They are out. We have what are
2 known as the ADB, all different biases against the
3 death penalty. You are really getting people who
4 believe in the death penalty as a pool of jurors.
5 Then when the Prosecutor starts off with the Voir
6 Dire, they ask the question, "Do you believe in the
7 death penalty? Yes, I do. Take a life, a life
8 should be taken." Now you understand, so they
9 start indoctrinating them with the idea, now you
10 can't believe that. You have got to follow the
11 rules. A lot of times, we could ask that person
12 and their views would be very, very strong views,
13 but the Prosecutor immediately goes into this idea
14 of indoctrinating them, which he should. Dennis is
15 good at that. He's basically rehabilitating people
16 who automatically will say, "If the guy is found
17 guilty of murder, he's dead," and that is very
18 often what we have and that is not unusual. We
19 expect that.

20 But the problem is, you have people with
21 a lot of bias to begin with, and there really isn't
22 anything in there, except for the fact that the

1 Prosecutor gets to talk to them and indoctrinate
2 them first and sometimes, it almost gets laughable
3 because he indoctrinates them, wait a minute,
4 there's going to be a sentencing phase. You have
5 to listen to these mitigating circumstances, then
6 what would your decision be. Then they drop back
7 into their mode.

8 What happens if he's found guilty of
9 aggravated murder? Gets the death penalty. All
10 I'm saying is, I understand what you are saying.
11 If there isn't some substantive reason, then we
12 should do it that way forever. At the same time if
13 you look at it, the rationale for it, if you say
14 there's the burden of proof, there's no burden of
15 proof in Voir Dire. None whatsoever. As a matter
16 of fact, the uniqueness of this case is the sense
17 that they are ultimately looking for the death
18 penalty. It is not like any conventional trial,
19 because the sentencing is left up to the Judge.
20 The end result is they are looking for death and
21 they are getting a death qualified Jury.

22 The question is, who is going to be in

1 that pool of jurors. He's already got the deck
2 pretty well stacked and then you are going to stack
3 it some more by letting them figure out, listen
4 folks -- just keep saying, you have got to
5 understand, there's mitigating factors here. You
6 can listen to those, but a lot of these people,
7 they will openly tell you their views and I
8 understand what their views are and I understand
9 why their views are that way. They are frustrated
10 with all this. The idea of somebody killing
11 somebody.

12 But at the same time, there isn't any
13 reason why we shouldn't be able to at least
14 alternate that. That is fair. Fifty-fifty, it is
15 all 100 percent theirs. There isn't any rule per
16 se and you are not going to set any. This isn't
17 some great thing that is going to upset the apple
18 cart, and I don't know why the Prosecutor would be
19 worried about it. Why would you be worried about
20 letting the Defense go first?

21 MR. WATKINS: I would like to
22 respond. I disagree. I think that the traditional

1 ways of doing things should be maintained unless
2 there's good reasons to change things. I look at
3 things more conservatively than Jim Lewis. I think
4 it gives a structure to the whole trial. I would
5 note that first, our procedure, the Court asks the
6 questions generally of each juror, regarding death
7 qualification, and I think the last two trials that
8 the Defense counsel did a very able job with the
9 present procedure and there was no death penalty
10 given by the Jury. So, they were able to get
11 through these jurors and this whole system that
12 seems to be so negative rather successfully, the
13 last two Jury trials they tried. I think the
14 present procedure works for both sides.

15 MR. LEWIS: Our sister State, which
16 is Pennsylvania, Pennsylvania allows alternating
17 Voir Dire. They are right across Ohio. It seems
18 like they have come of age and said there's no
19 reason --

20 THE COURT: That surprises me,
21 because they are more tradition bound than we are.
22 There's a procedure, there's a set pattern, which

1 that is that is the positive approach to the law.
2 This higher law argument that you are raising
3 something extraneous to, again I think it has to be
4 based on some substantive due process argument. I
5 don't think you actually have any, other than your
6 misgivings. You stated something which I know that
7 all Defense counsel truly believes, and that is
8 that the process weeds out all of those who are
9 incapable because of philosophical or religious
10 views of finding a death penalty. I don't agree
11 that that in any way causes the Jury to be an
12 unfair Jury to the Defendant or to the Prosecution.
13 Because you have many people on a Jury, we go
14 through extensive questioning. The Court goes
15 through the thing, you go through the thing, the
16 Prosecutor does. All that they are asked is no
17 matter what your feelings are, can you set them
18 aside and follow the law. That could include
19 somebody who is in favor of the death penalty, but
20 is willing on the facts to not impose the death
21 penalty because of the mitigation factor.

22 MR. LEWIS: No question about it.

1 Absolutely correct.

2 THE COURT: It would be totally
3 improper for the State to allow somebody on who
4 says, "I can't follow the law, because I couldn't
5 find anybody guilty."

6 MR. LEWIS: They are gone all the
7 time. They stick out like sore thumbs. The only
8 thing I'm saying is that the interesting thing
9 about it, we have individual Voir Dire, and we have
10 it for a real good reason. The real reason is that
11 we want people, they can live their life out there
12 in the outside world. They get in here, we're
13 doing a very serious thing. We have got to find
14 out what their true feelings are. Most people
15 aren't totally open about it. They don't sit there
16 and say, "I wanted to kill somebody." If they hold
17 views that are pretty strong and they come in and
18 they pick up on the idea, "Well, if I just say this
19 and say that, I know what to say now," whatever,
20 and it is a matter of privacy, if you have a chance
21 to talk to them openly and get their feelings out
22 about something, fine. I think that you have a

1 better shot at getting people that honestly feel
2 the way they think about this, and I can
3 indoctrinate people. This isn't politically
4 correct. You shouldn't say this kind of thing. By
5 God we don't say those kinds of things, if we
6 didn't hear anybody say don't say that stuff, our
7 true feelings might say --

8 THE COURT: That is the reason we
9 have individual Voir Dire. They are not exposed to
10 what all of the correct answers are. It is safe to
11 say that somebody that wants to be on the Jury, no
12 matter what their moral foundation is,
13 philosophical beliefs, instinctively they can give
14 the right answer to be on the Jury. When you get
15 somebody up here and you have seen them, they say,
16 "Under no circumstances could I impose the death
17 penalty." We have also had the reverse. We have
18 had people say in Voir Dire, "If the person is
19 found guilty, I think you should suffer the death
20 penalty." Those people are excused. Or if you
21 have any doubt in your mind, you have the
22 preemptory challenges. That is the process.

1 MR. LEWIS: I just want to say that
2 in the entire context in all of the cases we have
3 ever tried here, and this case will be no
4 different, you will always hear, "Yes, I believe he
5 should get the death penalty." You are going to
6 hear that 99 times, but it is when we go ahead and
7 say, "Wait a minute, there's something called a
8 sentencing phase in this trial. There's something
9 called mitigating factors we want you to consider
10 those. Those are ones you are going to have to
11 consider." That is when you are changing your
12 mind. That is when you are saying, "Okay, even
13 though you believe this is what should happen in
14 your own personal belief, we're going to change it
15 over." That is what we always run across. That is
16 99 percent. The question always becomes is that in
17 my mind, as a Defense lawyer, and I think even in
18 the Court's minds that the people, are they going
19 to go along just to go along because they don't
20 want to aggravate the Judge and the Defense lawyer
21 and just say, "I'll consider that. I'll take that
22 into consideration. I'll do that." Whatever, that

1 is the problem. Who do you have that really is
2 going to own up to it and say, "Yes, I can really
3 do that." Who is going to give this lip service --

4 THE COURT: James, I can say because
5 of your position as a Defense lawyer and a fine job
6 you do, I think that you sell the average citizen
7 short. I understand why. But we go to a doctor,
8 we don't ask him to show us his credentials.

9 MR. LEWIS: I do nowadays.

10 THE COURT: We deal on the basis of
11 trust every day in our lives with many people. The
12 process in my mind is not perfect. Never will be,
13 but it is run by all us, by humans, but the process
14 has addressed all the various arguments that you
15 are making here, you are not comfortable with them.
16 I'm not at times, but the process is as it is, and
17 we try to work them to the best of our ability.
18 That is all that anyone can ask of us.

19 MR. LEWIS: I know. He wants me to
20 move to Pennsylvania.

21 THE COURT: Even in light of your
22 eloquent argument, I'm going to overrule it.

1 MR. CONSOLDANE: Motion 39 is that
2 we address this many times before, that taking the
3 Jury list only from the voters' registration is
4 completely unfair to most Defendants in these type
5 cases and that it would be much better for us to
6 take the Jury pool from the drivers' registration.

7 MR. MORROW: Consistently, the voter
8 registration list has been deemed to be a
9 sufficient sampling of the draw. Mr. Watkins
10 informs me that I failed to cite the Getsy, which
11 has recently been cited and affirmed, the fact that
12 the voter registration is an appropriate sampling
13 from which to draw.

14 MR. CONSOLDANE: That is bad law.

15 THE COURT: I think there's another
16 point --

17 MR. WATKINS: There's several in the
18 last couple of years, including the U. S. Supreme
19 Court.

20 THE COURT: All of the other methods
21 that went to the other method, the driver's
22 license, the last I knew had gone back to the voter

1 registration. You have got another factor also in
2 the voter registration role in my opinion, those
3 are people who at least are able to read and write,
4 are able to observe what is going on around them.
5 Usually a little bit, perhaps more educated,
6 whatever.

7 Now the argument can be made, that it is
8 not a cross section. Again the legislature has
9 come up with this method, and any argument that is
10 going to be made contrary to the statute has to be
11 again based on some substantive due process.

12 MR. LEWIS: They enacted the statute
13 to allow for the licensee. That is why they put
14 the statute in. If they thought everything was
15 hunky doory, but we don't want anybody that doesn't
16 vote. The only people that vote in this country
17 are going to be able to sit on the Jury. Everybody
18 else is stupid, they don't care about society.

19 THE COURT: That is the reason that
20 the statute allows the county to make the decision
21 to go with the drivers' registration, but every
22 county that has tried that has found that it is

1 totally unproductive. Doesn't work. People change
2 their addresses.

3 MR. LEWIS: Voters change their
4 addresses, too. The only problem is that because
5 the licenses, because you go four years apart and
6 that is a real problem in that sense, but does that
7 make it any less than every six months we go out
8 and vote for somebody like Traficant or Maridee
9 Costanzo or whatever.

10 THE COURT: Maybe that proves --

11 MR. LEWIS: I don't think anybody is
12 going to vote this year. I'm saying they enacted a
13 statute for that. The legislature at one point
14 says, let's use the voters. And at the same time,
15 they went ahead and enacted the statute to be used
16 in order to build and get more of a cross section.
17 There's no question that the voter list itself, you
18 are defining a certain group or whatever. There
19 are other groups that are left out, but they are no
20 less a part of our society.

21 THE COURT: That was the argument in
22 getting the driver's license was that it is a more

1 comprehensive selection from society. In practice,
2 it hasn't turned out that way and it became
3 extremely burdensome financially for the counties
4 to try to do that. We could also just go out here
5 and grab 12 people on the street and say, "You are
6 on the Jury." You have to have some process.

7 My whole point is this, James. I won't
8 beat this to death anymore. The legislature has to
9 draw up the law. The Supreme Court has to set
10 rules by which we're governed. Those must stand on
11 their face. Unless the higher law says, "This just
12 ain't right." But that is the burden on the
13 Defendant, to prove that that higher law says
14 something different.

15 MR. LEWIS: That is a very difficult
16 thing. You mentioned a while back, you mentioned
17 that when you death qualify a Jury, they did some
18 studies. There were more guilt prone type people.
19 The conviction is a higher degree. They did the
20 studies. The unfortunate thing is that nobody
21 wanted to hear it. First it started out with this.
22 You got a point -- well, you haven't proved -- oh

1 no, they did the studies and said the studies don't
2 really say that. It is okay. I think their
3 rationale was that the guilty people ought to be
4 found guilty by guilt prone jurors.

5 The point being is that a lot of times we
6 have all of these things that go on and they may be
7 incorrect or whatever, and the questions come back
8 in the study. Who is going to be able to determine
9 the study to find out whether, and have more young
10 people involved in the system? They don't get
11 picked because they don't vote. Young people as a
12 whole, don't go to the voter pools. The problem
13 is, this is the justice system, it is not an
14 election. That is the whole point. The whole
15 point is, this is the judicial system. This is the
16 United States. We have got people in here, we have
17 got Trumbull County. All of the citizens of
18 Trumbull County should be eligible to come in. It
19 has nothing do with whether you vote or don't vote.
20 The election process has nothing to do with the
21 judicial system. The judicial system says, you get
22 a cross section of your people, what is the most

1 efficient, whatever. It is not really from the
2 drivers' list. All you do is combine the two is
3 really what you are doing. So, probably
4 three-fourths of it is going to be coming out of
5 the voter registration anyway. But the point is,
6 you combine the two with technology. That is why
7 they allow it. Sure, to come out and say, great
8 study. The study has happened. They are saying
9 that they are under represented. Especially the
10 young. They are really unrepresented, because they
11 don't really register to vote. They are off at
12 college, like Dennis and I did. Who cared? As
13 long as we were down at the local pub and had a
14 good time, we were all right. But the point being
15 is that it has nothing to do with the election
16 process. What it has to do with is the cross
17 section of people who are in this county. It is as
18 simple as that. And if you are going to use the
19 system, that arbitrary, because you have got to
20 sign up to vote in order to participate in the
21 judicial system, that's what it boils down to.

22 If you want to reverse the argument, in

1 order to be a juror in this county, in order to
2 participate in the judicial system, you have to
3 register to vote. If you never register to vote,
4 you will never participate. You won't have access
5 to anybody in Trumbull County as a juror, unless
6 you register to vote.

7 THE COURT: That's statutory --

8 MR. LEWIS: That is a
9 pre-qualification to be a juror. Why is there a
10 pre-qualification to be a juror that you register
11 to vote?

12 THE COURT: It is not a
13 pre-qualification, it is an exclusion that you can
14 pretty well overcome by registering to vote. I
15 don't think there's any conscious effort if you
16 read the legislation on the drafting of that
17 statute, making the voter rolls, where the source
18 of jurors. Any attempt to exclude anybody, it is
19 tried to get, what do you do, go to the phone book?

20 MR. LEWIS: It was done for
21 convenience.

22 THE COURT: If you go to the phone

1 book, people don't have phones.

2 MR. LEWIS: There's another place
3 that they had all of the names. Let's see, who is
4 collecting all of these names? That Board of
5 Elections, they have got a big group down there.

6 THE COURT: As long as there's not
7 an attempt on behalf of the selection process to
8 exclude any person or group of people.

9 MR. LEWIS: What it does, it does do
10 that. It is not a conscious thing. Saying we
11 don't want young people on Juries. They just look
12 for a source where they can find a large group, but
13 technology has come along and say, we have got a
14 way to combine the groups to bring more people into
15 the system and it isn't that difficult.

16 THE COURT: I understand your
17 argument and I don't say that I am totally in
18 disagreement with it, but again I'm going to go
19 with what the law is. Denied.

20 MR. LEWIS: Number 40. It is the
21 individual sequestered Voir Dire on the topics.
22 That is being venue publicity.

1 MR. MORROW: Those items which we
2 typically do such as the death qualification and
3 venue, we don't have any objection to.

4 THE COURT: That will be granted.

5 MR. CONSOLDANE: Motion number 41,
6 we request that the State give us the reasons why
7 they are exercising their preemptory challenges. A
8 lot of times they do this just to get rid of people
9 they think are not in favor of the death penalty.
10 That is unfair.

11 MR. MORROW: Quite simply,
12 preemptory allow us to pick and choose the people
13 we wish. Unless it is something that is protected
14 under a Batson problem. At that point, it can be
15 appropriately addressed at that time.

16 THE COURT: I think preemptory is a
17 private matter, unless there's some issue raised as
18 to gender or some discriminatory exercise on the
19 preemptory challenge, there need not be any reason
20 given. The opposite side always has the right to
21 call into question any preemptory challenge.
22 Batson case will be followed.

1 MR. LEWIS: Number 42 is the
2 questionnaire. Over the years, we have attempted
3 to get our questionnaire in and every year it
4 really is coming down in size. If you take a look
5 at what is attached here, it is a very short
6 questionnaire. It is only 12 pages and it is big
7 print, so there's only 20 questions on there and it
8 encompasses a lot of what the conventional
9 questionnaire includes that is sent out by the
10 Court, and I would think, if the Court looks at it,
11 there's some other additional information that we
12 always ask the jurors anyway, so I think it would
13 be appropriate to ask the Court to adopt this
14 questionnaire and send it out.

15 MR. MORROW: The State has not
16 submitted a questionnaire. It believes that the
17 one the Court presently uses encompasses all of the
18 same information that the Defense is requesting and
19 it is done on two pages.

20 THE COURT: I think it is
21 appropriate to use the questionnaire we have used
22 in the past, unless the Defendant has something

1 that is peculiar to this case that you wish to have
2 added to that. I'll entertain their motion in that
3 regard, otherwise the regular questionnaire will go
4 out.

5 MR. CONSOLDANE: Number 43 is that
6 we would request that the State be prohibited from
7 excusing jurors who express a concern about the
8 death penalty. At this point in the trial,
9 everybody on that Jury is going to have to say that
10 they could impose the death penalty. Just that it
11 would be unfair for them to then further stack the
12 Jury by getting rid of everybody that expresses
13 that they have any concern about the Jury, about
14 the death penalty.

15 MR. MORROW: Quite simply, again the
16 rationale for the preemptories need not be
17 identified by the State unless there's some
18 suggestions that it is rationally motivated similar
19 to those in the Batson case. The State does not
20 feel this is an appropriate motion to be granted.
21 Likewise, what if we have jurors that the Defense
22 wishes to strike about if they express something

1 about not executing somebody?

2 THE COURT: It cuts both ways. I
3 think that most people in Voir Dire, the cases that
4 I have had occasion to sit through, there's a
5 reluctance on most people's part to think that they
6 might be in a position of having to consider
7 recommending a death penalty, so it is not unusual
8 that they express that. The whole object of that
9 individual Voir Dire is to get a person who can
10 conscientiously listen to the evidence and follow
11 the law wherever that leads them. If somebody
12 expresses doubt as to whether or not they could
13 impose the death penalty, they may, after this
14 procedure that Jim is afraid of, where to quote
15 him, they have been indoctrinated either by the
16 Court or the Defendant or the Prosecutor, where
17 they end up saying, "Well, I can do that." Both
18 sides have the right in that case to exercise
19 preemptory and there should not be any
20 justification need be given for it absent the
21 Batson case. So for that reason, I'm going to
22 overrule that. Again you have the right to bring

1 that up at any particular exercise of the
2 preemptory challenges.

3 MR. LEWIS: Motion number 44 is a
4 motion in regard to prior to death qualification to
5 the Jury. The question becomes did the State show
6 probable cause. Obviously this case was directly
7 indicted. There was no probable cause hearing.
8 We're asking that the State produce enough evidence
9 to show probable cause that the case would go
10 forward into the mitigation phase. Are the
11 aggravating circumstances there? And we move into
12 that phase before we death qualify a Jury.

13 MR. MORROW: Aside from the
14 practical impossibilities of having 45 or 50
15 alternates sitting through the guilty phase, this
16 proposition has been expressly objected through
17 State vs. Jenkins which is an Ohio State Supreme
18 Court.

19 THE COURT: I think that would upset
20 the entire statutory procedure set-up and cause
21 nothing but havoc. Could very well be that you
22 would have to go through a trial and then find that

1 none of them were qualified to go forward. With
2 the second phase, you have to start all over again.
3 That is not workable. I think the Defendant's
4 rights are protected up front by having that
5 determined in the usual manner. Overruled.

6 MR. CONSOLDANE: Motion number 45
7 deals with a very important issue that we have
8 faced in the past, and it is that the police
9 officers that have gathered information in cases
10 know that when they come across something that is
11 not going to help their case, they don't give it to
12 the State. And I don't know that even if the Court
13 grants this motion, that that is going to prevent
14 these officers from continuing to do that conduct.
15 We have found this in the past, but I think that
16 maybe, if you do grant this motion, that it might
17 instill upon the police officers their duty to do
18 what they should do. There's no question that they
19 should get all of the information that they gather
20 in investigating a crime should be turned over to
21 the State, and the State should then turn it over
22 to the Defense. They don't do it as a matter of

1 course. And even though that they are supposed to,
2 and quite frankly, I think even if the Court does
3 grant the motion, that a few of these officers
4 probably still won't do it, but I believe that if
5 the Court does grant this motion as it should, that
6 it may instill upon these officers to have a second
7 thought of not hiding information.

8 MR. MORROW: We filed an opposition
9 in respect to number 45. I would also note this is
10 similar to the motion previously argued with
11 respect to properly cataloguing the evidence as
12 Mr. Watkins has indicated. Our office provides
13 those materials, which are required to be provided
14 in those materials which need to be turned over
15 through the discovery process in the event that
16 somebody wants to hide something in spite of the
17 Court order, they are going to do it anyway. But
18 that isn't the case that exists. This office
19 provides full discovery and evidence that is
20 available. There's no harm for the Court to give
21 an order as to what they are supposed to do.

22 THE COURT: There's no reason why

1 the order can't be -- I really in my mind, think
2 that most police officers don't try to be Judge and
3 Jury. They do their job. They investigate the
4 case, they find evidence and they submit it. Now
5 it is conceivable that an officer may be looking
6 for evidence of a prosecutorial nature and may
7 overlook or think unimportant something that may
8 turn out to be exculpatory. So I find no problem
9 with saying to the officers, "Look, gather
10 everything and anything related to this case and
11 turn it over to the Prosecutor and let them make
12 the decision and not you, as to what evidence is
13 required here."

14 MR. WATKINS: Your Honor, if I am
15 understanding correctly, that the order is to us to
16 tell them to turn it over.

17 THE COURT: Turn over all and every
18 piece of evidence related to the case. It should
19 not be the officers or -- this is part of what
20 their concern, that the officer is making the
21 determination, it is truly, should be made by the
22 Prosecutor. You may have evidence that doesn't

1 necessarily, in the officer's mind help in
2 prosecuting the case, but that evidence may well be
3 exculpatory evidence that they would have a right
4 to. You can't make that decision unless you are
5 told that such evidence exists.

6 MR. CONSOLDANE: And the police
7 officers don't have that duty. You have that duty.
8 There's no burden --

9 MR. WATKINS: As a Prosecutor,
10 whenever we meet witnesses, we want all of the
11 evidence.

12 THE COURT: I understand that.

13 MR. WATKINS: And we discuss in
14 terms of everything exists, and to the extent we're
15 already doing this that you are suggesting.

16 THE COURT: Let me clarify this
17 further --

18 MR. WATKINS: I think if the Court
19 wants to bring all of the officers and say, you
20 have got an order to do this --

21 THE COURT: Let me do it this way --

22 MR. WATKINS: It implies that we're

1 not doing that.

2 THE COURT: That is what they are
3 always afraid of, and I suspect that it may be in
4 some cases unintentionally done for this reason.
5 If I am an officer going out and investigating
6 something, I may talk to somebody that says
7 something that isn't going to help in the
8 prosecution of the case. My job is to find
9 material to prosecute it. That person, just by
10 virtue of the fact they talked with them, should be
11 written down provided to the Defense if you are
12 going to have open file because they may find
13 something exculpatory in that. You catch that
14 distinction, that everything they do by way of
15 investigation --

16 MR. WATKINS: I think it is very
17 clear from the U.S. Supreme Court, we have that
18 duty, so that is incumbent on us.

19 MR. LEWIS: Listen, what the Judge
20 is asking you to do is you emphasize to the
21 officer, "Listen, give me everything you have."
22 I --

1 THE COURT: Everything that can help
2 in the prosecution.

3 MR. LEWIS: Just give me everything
4 you have got on this case.

5 MR. WATKINS: That is what we do.

6 THE COURT: The average officer
7 can't make that determination of anything that
8 might be exculpatory. They may have information
9 that is exculpatory, but they feel it is
10 unimportant because it isn't helping the
11 Prosecution. They don't even put it in terms.
12 That is all they are saying. You should direct the
13 officers to turn over all information, even though
14 they think it isn't necessary.

15 MR. WATKINS: That is what we do.

16 MR. CONSOLDANE: Then why do you
17 have an objection to us ordering you to do that?

18 MR. MORROW: Let's say an officer
19 goes out and knocks on the door, "I want to
20 interview John Doe." John Doe is not there. Then
21 he has to prepare a report and say, "I went to
22 interview John Doe on Wednesday, went there

1 Thursday, Friday, Saturday, by issuing an order."

2 MR. WATKINS: I don't think that is
3 what the Judge is saying.

4 THE COURT: In doing their
5 investigation, somebody says, this person knows all
6 about -- they go talk to that person, they
7 interview them. The person says a bunch of things
8 that the officer thinks isn't directly involved
9 with the prosecution. That is the type of
10 information that still should be turned over to
11 you, and I suspect it isn't most of the time. I
12 don't think that is any additional work on the
13 police part. Something they should do. This was
14 my investigation in to-to. Not selective parts.

15 MR. WATKINS: That is what I'm
16 saying. That is what we do.

17 THE COURT: I have changed, I'm not
18 going to order that directly, but I would request
19 that you make that request known to your officers.
20 Dennis, I don't think there's any doubt that an
21 officer is not going to be in a position to even
22 recognize at times exculpatory evidence. If it

1 doesn't help prosecute, it is not evidence as far
2 as he's concerned.

3 MR. WATKINS: If I meet an officer
4 and I say, "What do you have?" And I go to the
5 negative and the positive, that is why we have 20,
6 30 percent no bills. I don't want, if there's
7 exculpatory out there to indict people --

8 THE COURT: That is your job to make
9 that determination, not the officers.

10 MR. WATKINS: That is what we do.

11 MR. CONSOLDANE: We're asking for an
12 order --

13 MR. WATKINS: The Supreme Court is
14 incumbent on us to make inquiry.

15 MR. CONSOLDANE: Then why are you
16 objecting to the order?

17 THE COURT: It is just that the
18 defense always assumes, rightly or wrongly that the
19 Prosecutor doesn't get all of the information.

20 MR. WATKINS: "We order the
21 Prosecutor to turn over Brady material." Well, I
22 don't need an order. It is the law. You can spend

1 your time ordering us to do our jobs.

2 THE COURT: I'm not going to order
3 here. I'm just saying to you, tell your officers,
4 not just the ones in this case, all of them, so it
5 doesn't come up in the future.

6 MR. CONSOLDANE: Is the motion
7 denied then?

8 THE COURT: The motion is denied --

9 MR. WATKINS: To compel State
10 agents, you would have to have an order to them.

11 MR. CONSOLDANE: We're not asking
12 that, we're asking you to compel the Prosecutor to
13 do what he's supposed to do.

14 MR. WATKINS: I can only do what we
15 do. We say what do you have. We want your
16 complete case file. When you are dealing with your
17 witnesses, you tell them you want everything.

18 THE COURT: There's one other avenue
19 and that is the Defense has the right to cross
20 examine anybody at any point.

21 MR. WATKINS: They do. They say,
22 "Did you give everything to the Prosecutor in this

1 case, did you hold anything?"

2 THE COURT: I am denying because the
3 duty is already on the -- the duty is already on
4 the officers to provide all information.

5 MR. CONSOLDANE: You are denying it
6 even though it is their requirement to do it?

7 MR. LEWIS: All this is asking --

8 MR. CONSOLDANE: Leave it alone.

9 MR. LEWIS: The next one is 46.
10 Defendant's motion to compel disclosure --

11 THE COURT: You may wish to frame
12 that some other way than denied. The point is,
13 they are already under a duty it turn over.

14 MR. LEWIS: Number 46.

15 THE COURT: Defendant's motion to
16 compel disclosure of exculpatory and impeachment
17 evidence.

18 MR. LEWIS: As Dennis aptly put. It
19 is his obligation and the interesting thing even if
20 he doesn't know about it, he could be held
21 responsible for it and he should have given it to
22 us. The Courts are starting to close in.

1 THE COURT: Even when he doesn't
2 know about it?

3 MR. LEWIS: That is the law. Now
4 listen, you can't give an excuse because that is
5 what the other motion was about. You can't say or
6 you can't leave the gap there.

7 THE COURT: And say I didn't know
8 about it.

9 MR. LEWIS: I knew about it, but it
10 was innocent and the Prosecutor says, I didn't know
11 about it because he didn't give it to me. Get all
12 of the good stuff and doesn't get any bad stuff.
13 You break the link in the chain, then there's no
14 responsibility. Theoretically, you wouldn't have
15 to give any exculpatory evidence because the
16 officer would hold onto everything good. The
17 motion is simply asking the Prosecutor to make sure
18 that he orders, asking the officer to give him
19 everything in the file. He doesn't -- especially
20 if it is anything favorable to the Defendant, cough
21 it up. Most officers, they are not too crazy about
22 it. A lot of times, they don't know what is good

1 or bad, they know what is bad for the Defendant.
2 What potentially is good. Sometimes they don't see
3 it.

4 THE COURT: I don't know any good
5 answer to that question.

6 MR. CONSOLDANE: Is number 46
7 granted or denied?

8 THE COURT: Again, it is already
9 something that they are duty bound to do. I'll
10 grant it.

11 MR. WATKINS: I don't have any
12 problem. You can grant all of these to the extent
13 that the Brady and its progeny require the State in
14 the rules of discovery to give all this information
15 is granted.

16 MR. CONSOLDANE: That moves us to
17 motion number 47 and that is that we're letting
18 the -- letting them, the Prosecutor guard the hen
19 house. They determine what we should get and what
20 we shouldn't get, and I request -- we requested
21 this in the past that their entire file be
22 presented to the Court and be sealed and let the

1 Court of Appeals decide whether or not they gave us
2 everything that they should have. Otherwise,
3 there's no way we can figure out whether we got
4 what we were supposed to get or not if they bury
5 it. This way, if they have to turn over their
6 entire file, seal it and let it go up to the Court
7 of Appeals after the case is over, let them
8 determine whether or not they made the proper
9 decision. Otherwise, nobody else is making the
10 decision as to whether it is Brady material or not,
11 except for the Prosecutor.

12 MR. MORROW: Quite simply, first of
13 all, this in essence is going to be rendered moot
14 by the fact that we're going to provide open file
15 discovery. Secondly, if we're going to provide
16 open file discovery, if we're going to hide it,
17 we're going to hide it from the Court anyway. This
18 is kind of a factitious argument.

19 The third thing is this presupposes
20 there's some illegitimate purpose on behalf of the
21 State or the Prosecutor's office, and the Court is
22 well aware of the fact that we provide open file

1 discovery. They are going to have an opportunity
2 to review it. It is another one of these
3 circuitous motions. They want to us do it, but
4 they want us to turn over the file. If we want to
5 hide something, we're going to hide it from the
6 Court as well.

7 THE COURT: That thought crossed my
8 mind. If you are so devious that you are going to
9 withhold it from the Defense, nothing to prevent
10 you from not putting it in the file to begin with.

11 MR. WATKINS: The purpose of this
12 motion is to, when we didn't do open file -- this
13 is getting ridiculous, we're going to go over,
14 we're trying to give complete discovery.

15 MR. LEWIS: It boils down to
16 something very simple. It is this. They control
17 the investigation, they control all of that. They
18 have the information. They are Prosecutors. They
19 think like Prosecutors. They are supposed to think
20 like Prosecutors. They are after that. We're
21 Defense lawyers. We defend the guy. That is their
22 bias. That is their thinking, when they look at a

1 lot of things. We have been in chambers and we
2 have gone through this and all of these death
3 penalty cases. We'll look at something and I'll
4 go, "This is kind of important. I think I want to
5 work on it." They say, "That is not important.
6 What is important about that?" There's a mind
7 frame. It is a mind set, that is the problem with
8 this. There's a mind set. I'm not saying that
9 they shouldn't have it, because they should have
10 because they are Prosecutors. They are not going
11 to look at the case the way we look at it. They
12 never will. That is the problem, when they are
13 sitting on that pile of evidence and looking at it.
14 You have to, that is why they say have an
15 independent review. That is why we have Judges.
16 You have got one side. You have got the other
17 side. You are in the middle. You are supposed to
18 be unbiased and unprejudiced and just look at the
19 evidence. The problem is, it is all over there.
20 The question is, does he have the mind set to see
21 what is going to be favorable to us? He doesn't
22 want to look for anything favorable. He's looking

1 for how to prosecute the man. That is his mind
2 set. I understand that. That makes sense because
3 he's supposed to be a Prosecutor.

4 MR. WATKINS: If the Public
5 Defender's office wants to make copies of
6 everything so they can have this file at their
7 expense, they can do it. This is ridiculous.

8 MR. LEWIS: If it is open file, and
9 everything is in there, then we get a shot at it,
10 then it is okay. That in essence takes care of the
11 bulk. As long as everything that has been provided
12 by the police to them.

13 MR. CONSOLDANE: The other problem
14 with the open file that I have had, okay, you have
15 open file, you can come over and look at it, then
16 we get into trial and they bring something up and
17 say we had open file. It was in there, you should
18 have seen it when it wasn't in there. Then it is
19 my word against there's. I don't like open file
20 discovery for that -- I want them to give it to us,
21 not just come over and look at it. I want the
22 discovery. I want them to give it to us and say

1 this is what we gave you, so they can't come back
2 later and say, I showed that to you, when they
3 didn't.

4 MR. WATKINS: That is why we have
5 you sign an index on most everything. We'll have
6 an index.

7 THE COURT: You should insist on
8 them getting a list. I have to agree, the
9 Prosecution tends to see themselves on a white
10 charger with white armor and you see them on a
11 black charger with black armor. No question, it's
12 a state of minds. I find nothing unusual about
13 that. I'm going to deny 47.

14 MR. LEWIS: Number 48 is the big
15 thick one. That is all of the Constitutional
16 arguments.

17 THE COURT: I'll deal with that in
18 writing.

19 MR. CONSOLDANE: Number 49 is we're
20 asking for a charge by the Court to the Jury in
21 regards that they do not have to unanimously decide
22 against the death penalty before they can move onto

1 the other possibilities, and the last couple of
2 cases that I have had, the Court has done that, has
3 instructed the Jury that if they can't reach an
4 unanimous decision as to death, they can move on
5 and consider one of the life options. They don't
6 have to necessarily unanimously agree or not agree
7 on the death penalty first before they can move on.

8 MR. WATKINS: I think some of this
9 stuff can be continued to when we get to that point
10 in time.

11 MR. CONSOLDANE: We have done it in
12 the past.

13 MR. LEWIS: The motions here, that
14 is the way the instructions have been worded
15 before. It is the same thing as lessor included
16 offenses. Say you cannot unanimously agree
17 whatever, the point is, you don't have to be
18 unanimously against the death penalty to move to
19 the other. There's a disagreement. That means you
20 move to the other. You don't have six people
21 beating up on the other six people or vice versa
22 and have a war.

1 THE COURT: I would suggest that we
2 deal with this if we get to that point in time.
3 You have adequate time.

4 MR. CONSOLDANE: Sometimes these
5 motions get lost and this is a very -- this has
6 been done --

7 MR. WATKINS: You argue Jury
8 instructions on every case. We have got other
9 cases we can go by. We're going to be arguing Jury
10 instructions.

11 MR. LEWIS: If you don't have any
12 objection to this, he can write down granted.

13 MR. WATKINS: I would say let's take
14 the Jury instructions from Adams and Getsy.

15 MR. CONSOLDANE: And that was in
16 there. We have argued it. Why do you object to
17 it?

18 MR. WATKINS: The way yours is
19 worded is not the way the instruction is.

20 MR. CONSOLDANE: Yes, it is.

21 MR. WATKINS: That is why I say take
22 up instructions at the appropriate time.

1 THE COURT: Let's take it under
2 advisement. That is taken under advisement.

3 MR. WATKINS: I think there's some
4 recent case law dealing with Jury instructions in
5 the past year. I want to take a look at them at
6 the appropriate time. I'm sure the Court would
7 consider the most recent Supreme Court cases.

8 THE COURT: I have a similar
9 wariness here that the way that some of these are
10 worded, if I just carte blanche grant them or deny
11 them, I may not be taking everything into account.
12 I wanted some time to review these, also. Motion
13 to instruct the Jury regarding parole, motion
14 number 50.

15 MR. LEWIS: That would be another
16 one to put on hold.

17 THE COURT: You mean to go on
18 further to tell them that one of the choices is
19 life without chance of parole before 30 years,
20 whatever?

21 MR. CONSOLDANE: Do you want to
22 grant it?

1 MR. MORROW: 49, 50, 51 we're going
2 to reserve; 52 we're going to reserve. Number 51
3 is another motion regarding instructions. We'll
4 put that on reserve. Number 49, 50, 51 are all
5 instructions. 52 is instructions. 53 is
6 instruction. They are all reserved. Number 54 is
7 an instruction.

8 MR. WATKINS: The same with 55, 56,
9 57, 58, 59, 60, 61.

10 MR. CONSOLDANE: Number 57, there's
11 no objection to that, is there?

12 MR. MORROW: No. It is what we do
13 anyway.

14 MR. CONSOLDANE: 57 is granted?

15 THE COURT: 57 will be granted.

16 MR. WATKINS: All of these others
17 from 49 through 62 are reserved or continued.

18 MR. LEWIS: That gets us to number
19 63.

20 MR. CONSOLDANE: Number 63 is just a
21 motion to prohibit the reference of the first part
22 of the trial being referred to as the guilt phase.

1 THE COURT: Has anyone else come up
2 with anything different than that in case law,
3 still guilt phase?

4 MR. MORROW: It is still referred to
5 as the guilt phase. Even though in our last
6 efforts we were in with Mr. Consoldane and Mr.
7 Lewis, we agreed to stay away from this. Low and
8 behold, Mr. Consoldane and Mr. Lewis started
9 referring it to it as the guilt phase.

10 MR. CONSOLDANE: I objected to it
11 when Jim did it.

12 MR. MORROW: It is impossible to
13 differentiate it other than the guilt phase and the
14 phase.

15 MR. LEWIS: The point being, even if
16 I have got Alzheimer's disease, the word guilt
17 phase -- we don't come to a conventional trial and
18 say, "Hey, ladies and gentlemen, we're going to
19 have a guilt trial today." It is called a trial.
20 We have a trial. We have a sentencing. That is
21 it. We're asking for that. Whatever. If I screw
22 it up and I screwed it up or whatever, let's put it

1 on.

2 THE COURT: But the Jury has to be
3 made aware at some points that there are two trials
4 in effect.

5 MR. LEWIS: It is not really two
6 trials. It's a trial --

7 MR. WATKINS: It's a bifurcated
8 trial.

9 MR. LEWIS: It would make sense to
10 jurors --

11 THE COURT: What are you going to
12 use to refer to the first stage of the trial?

13 MR. LEWIS: Your introductory
14 instructions, unless it is Judge McKay that uses
15 those. He talks about it. He puts it in the
16 parallel of the trial and the sentencing. Like
17 when he sentences a person, he uses that, which
18 jurors understand that. It is pretty simple once
19 you catch the drift or whatever. You start using
20 all of the different terminology, but a trial is a
21 trial. It figures out whether you are guilty or
22 not guilty, and the sentencing is a sentencing. It

1 just so happens in this case, the Jury participates
2 in the sentencing. I don't know why we're
3 reinventing the horse, the cart, the wagon, the car
4 and everything.

5 MR. WATKINS: Let Mr. Lewis describe
6 it the way he wants. Let the State describe it the
7 way we want. As long as it is not objectionable
8 and to curtail the way we say things is to me, it
9 is getting ridiculous.

10 MR. CONSOLDANE: We're just asking
11 that he not refer to it as the guilt phase. That
12 is implying that Mr. Jackson is guilty.

13 THE COURT: I don't agree with it.
14 It is the determination.

15 MR. WATKINS: It is never said that
16 way, the way you are saying it. The way I would
17 say it, there's two parts of the trial, the first
18 part is to determine whether or not the Defendant
19 is guilty; and the second part, if you would
20 find --

21 MR. LEWIS: Let's call it the
22 innocence phase.

1 MR. WATKINS: You can call it that.
2 I'll call it the guilt phase.

3 THE COURT: I'll withhold the
4 ruling. If the thing becomes onerous on one part
5 or the other, I can deal with it. On its face, the
6 use of the term guilt phase, I don't find to be
7 detrimental or prejudicial to either side. I
8 guess, if used in the right context, it would be
9 interpreted, then you have the right to object to
10 it.

11 Motion to allow the Defendants to argue
12 first and last at the sentencing hearing, that is
13 number 64.

14 MR. LEWIS: The rationale, it seems
15 correct, if you follow the logic and rationale that
16 the State has already proved, you have aggravated
17 murder, and if they have already got the
18 aggravating circumstances, move into the second
19 phase, and at that second phase if Anthony and I
20 don't do anything, we just sit over here and say
21 rest, the Jury is left with nothing but guilty.
22 So, the problem is, we do have the burden of going

1 forward in that phase. And if we have the burden
2 of going forward, they still have the burden of
3 proof, but we still have the burden of going
4 forward and it seems as though we should have the
5 first and the last response to the Jury.

6 THE COURT: Isn't it a fact that the
7 State has to prove, the aggravating factors
8 outweigh?

9 MR. LEWIS: They have the burden of
10 proof. The problem is if we don't go forward with
11 anything, they have won automatically. They have
12 won by default. If we don't do anything in that
13 mitigation phase, that sentencing phase, I have got
14 to get used to that sentencing phase, they already
15 got their aggravating circumstances. You have to
16 weigh aggravating circumstances to get to the
17 mitigating factors. If there are no mitigating
18 factors, you have automatically got it, you are a
19 winner.

20 MR. WATKINS: I don't agree.

21 MR. LEWIS: If we don't go forward
22 with anything, they are winners. Who really has

1 the burden? We have the burden.

2 MR. WATKINS: We have the burden.

3 MR. LEWIS: We have the burden to
4 produce that evidence. That is what it is about.

5 THE COURT: If you do nothing, I
6 don't instruct them and say like a directed
7 verdict, you lose because they didn't present any
8 evidence. They have to determine that the
9 aggravating factors outweigh mitigation.

10 MR. LEWIS: But remember, there's no
11 mitigating factors. We didn't produce anything.
12 If we don't produce anything, it is simple logic.

13 MR. WATKINS: The argument is that
14 the Jury can always find when I argue and the
15 burden of proof beyond a reasonable doubt,
16 mitigating factors, that this is purely in a
17 theoretical sense, because I think there's
18 ineffectiveness because the Supreme Court has said
19 that you can argue residual doubt and the weight of
20 the evidence. You are creating a scenario that has
21 never existed, will never exist. The bottom line
22 is the burden of proof is on the State of Ohio and

1 we must convince the Jury beyond a reasonable
2 doubt, the aggravating factors outweigh the
3 mitigating factors.

4 THE COURT: You don't get up and do
5 anything during the closing.

6 MR. WATKINS: State vs. Rogers, the
7 Supreme Court of Ohio, that is the appropriate way
8 of doing it.

9 THE COURT: That is what happened in
10 the Amanda Yates trial.

11 MR. WATKINS: There's a lot of times
12 I have not presented evidence, but evidence from
13 the first part comes in for the second part. That
14 is what they did in Yates. There's several cases
15 we haven't presented any evidence in the mitigation
16 phase, and Stanley Adams, we didn't present any.

17 MR. LEWIS: What do you mean?

18 MR. WATKINS: We didn't introduce
19 anything new.

20 MR. LEWIS: You only rebut what we
21 introduce.

22 MR. WATKINS: We didn't present any

1 rebuttal.

2 MR. LEWIS: I don't care how many
3 times Dennis says this. The logic and rationale, I
4 can't get around it. When they have aggravated
5 murder and aggravating circumstances, the burden
6 goes to us. It's burden of going forward, and we
7 don't do anything --

8 THE COURT: For the time being, I'm
9 going to deny this motion. I'll entertain any
10 further discussion or arguments that you have. I
11 would like to think about that a little bit.

12 MR. LEWIS: Add this to it, is that
13 the first thing they consider is not life
14 sentences. The first thing they consider basically
15 is the death penalty. If they consider that first,
16 they are at their end of the spectrum. They are
17 already there. If they are already there, then it
18 should be us given the opportunity to argue first
19 and last.

20 MR. CONSOLDANE: Motion number 46
21 and 65, we would like to reserve those until later
22 date. They are premature.

1 MR. MORROW: You mean 65 and 66?

2 MR. CONSOLDANE: Yes, 65 and 66 are
3 actually premature. We would like to preserve
4 those. Number 64 is challenging the array of the
5 Jury. The Jury hasn't been picked yet and 65 or 66
6 rather is the motion for change of venue, and we'll
7 wait until we start picking the Jury.

8 THE COURT: 65, I think motion for
9 change of venue, can only arise after you have
10 questioned the jurors. But 65 is something that
11 can be one of those preliminary motions that is
12 dealt with before we get too far involved here.
13 I'll allow you some time. That's not something we
14 should wait until three weeks before the trial.

15 MR. CONSOLDANE: Number 67, Your
16 Honor, on this motion here, the Court, and the last
17 case I have had you have allowed this, is when,
18 during the Voir Dire, when something comes up
19 with -- they have reservations about the death
20 penalty, before you automatically excuse them,
21 allow us to be able to talk to them. You have done
22 that in the past. But we're just making this as a

1 formal request.

2 MR. MORROW: The only codicil I
3 would include on this, if the reason for their
4 excusal is something along the lines of they are
5 unable to hear, they shouldn't be able to delve
6 into the death penalty. If the person has
7 testified they can't hear, they can't see, a reason
8 that is not related to the death penalty. They
9 shouldn't be able to delve into death penalty
10 issues.

11 THE COURT: That is a good point. I
12 assume he refers to somebody that says I can't make
13 a finding and therefore they are excused. We'll
14 handle that on a case by case basis.

15 MR. LEWIS: Motion number 68. What
16 we're talking about here are the jurors who,
17 prospective jurors that indicate that they can not
18 fairly consider any of the mitigating information
19 or circumstances presented by the Defense during
20 the course of the trial. We don't know exactly
21 what those are going to be, but we have to have a
22 potential juror or prospective juror with an open

1 mind enough to accept and understand first off, it
2 is the law that they would have to follow and
3 that --

4 THE COURT: No objection to that.

5 MR. MORROW: I think it is
6 conclusive that they are not going to follow, it
7 would be appropriate. It works both ways.

8 THE COURT: That is granted.

9 MR. LEWIS: Motion number 69 is more
10 a really bifurcated trial. In other words, the
11 trial in regard to the trial phase, seating of the
12 Jury and a Jury seated for the sentencing phase.
13 Only because of the studies that are referred to
14 earlier that indicate that death qualified Juries
15 are more guilty prone strangely, but they are.
16 Studies show it. But after the studies were
17 released and brought to the Courts, the Courts had
18 to look the other way. But there's a propensity
19 for a death qualified Jury, they are more guilty
20 prone.

21 THE COURT: Any comments from the
22 State?

1 MR. WATKINS: I don't believe that
2 there's any empirical evidence to prove that
3 proposition one way or the other. The only thing I
4 would indicate that Mr. Lewis and his team has been
5 fairly successful in getting life sentences in this
6 county and I think the whole system is pretty well
7 thought out and works.

8 THE COURT: Okay. I tend to agree
9 with that view. Number 69 will be denied.

10 MR. LEWIS: Number 70 asks for the
11 information that is accessible to the Prosecution
12 to also be provided to the Defense. An example of
13 that would be sometimes they will -- if they don't
14 run the LEADS or anything else to find out if
15 anybody has had a record or been convicted of a
16 crime or whatever, if they don't do it, I am
17 satisfied with that. But if they do do it, it is
18 something that we don't have access to, and if they
19 do it, they have that information regarding the
20 potential jurors. And I know in one case, it was
21 very innocuous that somebody had been convicted of
22 a DWI, and unfortunately, it wasn't phrased in the

1 sense, "Were you ever arrested or convicted of a
2 crime?" They say, "Were you ever a Plaintiff or
3 Defendant in a case?" And the potential juror had
4 no idea, just went over his head. Then later on
5 came back and said we want to excuse this juror for
6 cause, because they basically lied because they
7 were a Defendant in a DWI case. Of course, the
8 individual, he was a layman, he didn't catch or
9 understand it. What I'm saying is, we should have
10 access to that. They have access to it, we should
11 have access to it, only because we're back to that
12 whole idea, there's not a burden of proof or
13 anything else as far as the Jury goes, but if they
14 have access to that information, I think the
15 Defense should have access.

16 THE COURT: Does the Prosecution run
17 the records of prospective jurors?

18 MR. WATKINS: We do not run record
19 check on all of the Jury, we do not do that.

20 THE COURT: I would ask you I think
21 it would be proper and I think you probably do it
22 anyways, if you did have an occasion to check any

1 specific record, that should be divulged.

2 MR. WATKINS: May I speak to this
3 issue? I would wish the Court to read our response
4 and I think it sets out that certain trial
5 information, there's strategy information, whether
6 the Defense gets it or the Prosecution gets it,
7 that is not discoverable. And in fact, there's
8 federal case law dealing with FBI reports on jurors
9 that is not discoverable. It is part of a trial
10 preparation that every lawyer has a right to have.
11 For example, if Jim Lewis would go down, he didn't
12 particularly care for a juror and he went down in
13 Warren Muni Court and pulled -- or went to some
14 Court and pulled a record on that person, it
15 wouldn't be incumbent on Jim to give us some of
16 his --

17 MR. LEWIS: I'll gladly give it to
18 you. You have the resources.

19 MR. WATKINS: I'm only arguing to
20 the Court the law. You don't get into our trial
21 preparation stuff as we don't get into your trial
22 preparation stuff.

1 THE COURT: Let me read you this,
2 James. In Costello, the Defendant contended on
3 appeal that, "The trial was unfair, because during
4 the Jury examination, the Government had access to
5 information not available to him or even to the
6 wealthiest." "The Court rejected this contention
7 as stated that not all information properly
8 available to the Prosecutor must be made available
9 to the Defendant." The Court added that the
10 District Court decision of refusal to permit
11 Defendants to inspect FBI reports on prospective
12 jurors were upheld in Best vs. U.S. and several
13 others. "Most states including Ohio adhere to the
14 rule and that the Prosecutor's investigatory report
15 on prospective jurors is not discoverable by the
16 Defendant." I'll allow you an opportunity to brief
17 that if you feel that that is not proper.

18 MR. LEWIS: Well, then may be
19 indicate to the jurors that the Prosecution has
20 probably had them investigated. We'll make that
21 comment. We'll be satisfied with that.

22 THE COURT: I'm going to overrule

1 your motion, gentleman, to review.

2 MR. MORROW: With respect to 71 is
3 that they argue last. It is the same as 69, which
4 is denied, and motion 64 that should be denied they
5 argue last at the sentencing phase. We would ask
6 that the Court follow that same ruling.

7 MR. WATKINS: That is State vs.
8 Rogers.

9 MR. LEWIS: Number 72 is regarding
10 the standard qualification for jurors to sit and
11 what they are able to do according to Witherspoon
12 and even if they have scruples against the death
13 penalty, they should be entitled to sit as a juror
14 if they can answer the question properly according
15 to the instruction given by the Court. Of course,
16 obviously this ties and dovetails back into the
17 motions previously. Those would be the first
18 people knocked off by the Prosecution, and I'll
19 wager money on it probably, even though it is
20 illegal to gamble in Ohio. I'll be willing to put
21 some money on that.

22 MR. WATKINS: Your Honor, are we

1 dealing with 72 and 73?

2 MR. LEWIS: Even the previous one we
3 did. The next motion is the same thing.

4 MR. WATKINS: If we would have a
5 juror that said, "You know, Jim Lewis, I really
6 think an eye for an eye is a pretty good thing, but
7 I'm going to accept Judge Stuard's ruling," you
8 would use your preemptory to get rid of that
9 person. I think it is both sides here. We're
10 going to be trial lawyers representing the position
11 that we hold. And that is the purpose of
12 peremptories. If I have a juror that says, "I
13 don't believe in the death penalty, but I can
14 follow it." I'm probably going to exclude, just
15 like he's going to exclude somebody that is going
16 to say the other. And that is the way our system
17 works and the way it should work.

18 THE COURT: You have the right
19 without comment as to why you are exercising that,
20 absent the Batson case approach.

21 MR. LEWIS: The Prosecutor is right
22 except for one thing. The deck was already

1 stacked. They are all in favor of the death
2 penalty.

3 THE COURT: They are not all in
4 favor of the death penalty.

5 MR. LEWIS: It's a question of
6 degree.

7 MR. WATKINS: Look at the last two
8 Juries. We had people who believed in the death
9 penalty and you got life sentences.

10 MR. LEWIS: I understand that, but I
11 am greedy. I wanted more.

12 THE COURT: The last two are denied
13 in conjunction with the ruling on the previous
14 motion that addressed in effect the same issue.
15 They have to be dealt with on a case by case basis
16 with the Jury.

17 (End of hearing at 12:25 p.m.)
18
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21
22

1 Wednesday, April 17, 2002:

2 Hearing on Motion to Suppress Evidence:

3 (In Open Court at 9:40 A.M.):

4 THE COURT: We're here this morning
5 on motion to suppress. Are there any opening
6 remarks by the Prosecution?

7 MR. WATKINS: No, Your Honor.

8 THE COURT: Defense?

9 MR. LEWIS: No.

10 MR. WATKINS: May I make a
11 statement? The only exception I would take to not
12 making an opening statement would be that my
13 understanding from the Defense's motion to suppress
14 that we're here today to deal with the issue of any
15 and all statements that the Defendant gave to law
16 enforcement authorities, is that correct? We're
17 here today regarding the issue of any and all
18 statements by the Defendant to law enforcement?

19 MR. LEWIS: Correct.

20 MR. WATKINS: There's no other
21 issue?

22 MR. CONSOLDANE: Anything derivative

1 from that, anything as a result of that, if that is
2 to be found and taken in violation of his rights
3 and any derivatives therefrom would be also.

4 MR. WATKINS: I would agree with
5 that.

6 THE COURT: The question is
7 primarily, James, this deals with statements, not
8 other types of physical evidence that you are aware
9 of?

10 MR. LEWIS: Per se, no.

11 MR. WATKINS: And we reserve the
12 right to argue other alternative theories if that
13 be the case.

14 MR. CONSOLDANE: True.

15 THE COURT: The State may proceed.

16 MR. WATKINS: The State would call
17 Jeffrey Hoolihan.

18 MR. LEWIS: We would make the motion
19 regarding preliminary matters that there be a
20 separation of witnesses.

21 THE COURT: All parties who are
22 going to testify in this matter other than whoever

1 Dennis chooses as a representative of the State,
2 will please remove themselves until called.

3 MR. WATKINS: We understand that
4 under the law that our representative will be here
5 throughout the trial, but for purposes of this
6 suppression hearing. Under the law he is permitted
7 to stay in. If the Court is saying he's to get out
8 for this limited purpose --

9 THE COURT: I'm not saying that. I
10 think the State has a right to have one person as a
11 representative of the State be present. That can't
12 be changed. If you are going to choose Sergeant
13 Monroe, then he will remain in that way throughout
14 the trial.

15 MR. CONSOLDANE: That is not the
16 law.

17 MR. LEWIS: I know it has been said
18 the State is entitled to a representative. That is
19 a qualified thing where the person has a special
20 expertise or a special way to aid the Prosecution
21 to handle the case.

22 THE COURT: It is not a monumental

1 problem. For purposes of this hearing only, I'm
2 going to ask Sergeant Monroe to have a seat
3 outside. For the record, the State has a right to
4 have whoever is handling the case or whoever they
5 choose to represent the State during the course of
6 the trial. For the purpose of this hearing, there
7 may be some merit to the Defense's argument,
8 because I assume Sergeant Monroe is going to have
9 some direct testimony on the issue at hand which
10 usually doesn't occur in that capacity during the
11 trial.

12 MR. CONSOLDANE: Just for the
13 record, that is a qualified right. It is not a
14 blanket right. They have to show that they need
15 him.

16 THE COURT: I disagree. You have to
17 show that need is overridden. You have just done
18 so by my ruling.

19 MR. CONSOLDANE: It is the other way
20 around. I'm not going to debate that at this
21 point.

22 MR. WATKINS: I would request that

1 before trial begins, that the Court instruct
2 Defense that if they wish to bring this to the
3 forefront that they bring a motion. We have
4 litigated this twice before, but I think that is an
5 appropriate motion.

6 MR. LEWIS: We'll do so.

7 MR. CONSOLDANE: We'll not.

8 MR. WATKINS: Also for the record,
9 we have given Defense counsel discovery and prior
10 to this hearing, copies of our four Exhibits. Also
11 I would note that Exhibit No. 4, which is a
12 transcript of the video statement that we'll offer
13 has been provided to the Court.

14 THE COURT: The Court has received
15 that.

16 MR. WATKINS: And in total, we
17 intend to introduce five Exhibits. The fifth
18 Exhibit would be the video tape.

19 THE COURT: Very good.

20 JEFFREY R. HOOLIHAN

21 being duly sworn according to law, on his oath,
22 testified as follows:

1 DIRECT EXAMINATION BY MR. WATKINS:

2 Q. Detective Hoolihan, would you give your full
3 name to the Court please?

4 A. Jeffrey R. Hoolihan.

5 Q. And how long have you been an officer for the
6 Warren Police Department?

7 A. I am in my 12th year.

8 Q. What position do you hold?

9 A. Investigator, detective assigned to major
10 crimes unit of the Warren Police
11 Department.

12 Q. What rank do you hold?

13 A. Patrolman.

14 Q. And as an investigator detective, have you
15 been assigned any special duties outside
16 your normal duties with the Warren Police
17 Department?

18 A. Yes.

19 Q. What are they?

20 A. I am assigned to the State of Ohio Organized
21 Crime Task Force along with the Trumbull
22 County Homicide Investigative Unit.

1 Q. And therefore, you at times would be involved
2 working with other agencies as a joint
3 effort in cases?

4 A. That is correct.

5 Q. Now, I wanted to direct your attention to on
6 or about December 20, 2001, and in the
7 evening hours, did you become involved
8 with a homicide in the Township of
9 Howland?

10 A. Yes.

11 Q. And would you give a background to the Court
12 how your involvement took place?

13 A. The initial involvement started on December
14 13th of 2001. I received a call from
15 Sergeant Dillon of the Howland Police
16 Department, who had asked me to do some
17 further investigation on a theft report
18 that was filed by Donna Roberts regarding
19 Santiago Mason and to assist in some
20 interviews at the Greyhound bus terminal
21 on East Market Street which is in Warren,
22 Ohio.

1 Q. For the Court's edification, the Greyhound bus
2 terminal had relevance in that
3 investigation because of what factor?

4 A. Donna Roberts and Robert Fingerhut both ran
5 that terminal and there were some
6 interviews that needed to be conducted
7 there.

8 Q. And Robert Fingerhut was the victim in the
9 homicide that is before this Court, is
10 that correct?

11 A. Yes, Sir.

12 Q. And so is Donna Roberts, who is a codefendant?

13 A. That is correct.

14 Q. And both resided, that is, Donna Roberts and
15 Robert Fingerhut, in Howland, Ohio?

16 A. Yes.

17 Q. And that homicide it is alleged, occurred
18 somewhere on December 12, 2001?

19 A. Yes.

20 Q. Now, following your involvement, going to the
21 issue at hand, did there come a time that
22 you had contact, personal contact with

1 Nathaniel Jackson?

2 A. Yes, there was.

3 Q. And first, before going into that contact, did
4 you know Nathaniel Jackson?

5 A. Not by sight. I did some preliminary work
6 based on my involvement from December
7 13th, and I did a records check on him
8 along with looked at some photographs
9 from the Bureau of Motor Vehicles at the
10 Trumbull County jail.

11 Q. And were you aware of any criminal record
12 where he had been in the past involved
13 with law enforcement agencies?

14 A. Yes.

15 Q. And would that record include repeat
16 occurrences with law enforcement?

17 A. Yes.

18 Q. And at the time of this homicide, were you
19 aware whether or not he had been in
20 prison?

21 A. Yes, I was made aware by the investigators
22 from Howland that he was just been

1 released from a prison facility.

2 Q. And that was where?

3 A. I believe in Lorain Correctional Institute.

4 Q. Grafton?

5 A. Grafton.

6 Q. Now, knowing this and having some background
7 information, explain to Judge Stuard how
8 you came into contact with the Defendant.

9 A. On December 20, 2001, I was made aware that
10 there was a warrant that was issued for
11 aggravated murder through Judge Stuard's
12 Court for Nathaniel Jackson. At that
13 time we put a plan together after
14 receiving information that he may be
15 located at an address on Wirt Street in
16 Youngstown, Ohio. After that information
17 was received, members of the Trumbull
18 County SWAT team, members of the Mahoning
19 Valley Violent Crimes Task Force along
20 with myself, had met at Sparkle
21 supermarket, located in Liberty Township,
22 at Gypsy Lane and 193.

1 Q. What time was that?

2 A. That was approximately I want to say 11:45,
3 10:30, 11:45 p.m.

4 Q. 10:30?

5 A. I'm sorry, 11:30 to 11:45 p.m. on December 20,
6 2001.

7 Q. And that is an approximation?

8 A. Yes.

9 Q. And was this effort one that dealt also with
10 the Howland Police Department?

11 A. Yes, Sir.

12 Q. And was anyone cooperating with the Howland
13 Police Department in attempting to locate
14 Nathaniel Jackson?

15 A. Yes, Donna Roberts.

16 Q. And to your knowledge, how was that occurring?

17 A. Throughout that day -- Donna Roberts was
18 arrested earlier that evening,
19 approximately 7:20, 7:30 p.m. She was
20 transported to Trumbull County jail to be
21 interviewed. After her interview, she
22 agreed to cooperate with law enforcement

1 and she gave us an address where
2 Nathaniel Jackson could be located and a
3 phone number.

4 Q. And so that information was given to you or
5 others working on this case and that is
6 why you ended up at that Sparkle Market
7 that evening?

8 A. Yes.

9 Q. Now, when you went to the Sparkle Market,
10 which I believe is right across the line,
11 it is in Mahoning County, is that
12 correct?

13 A. Yes, Sir.

14 Q. In Youngstown?

15 A. Yes.

16 Q. How did you proceed? What vehicle were you
17 in?

18 A. I had rode with Captain Bacon in his black
19 Chevy Blazer.

20 Q. And this Wirt Street address, is this in an
21 area that officers had concern about
22 security for them in making any arrest?

1 A. Yes.

2 Q. And would you explain why?

3 A. Based on our meeting with Lee Hopper, who
4 heads the Violent Crimes Task Force, who
5 works for the FBI, advised us that it was
6 a dangerous area we were going into. It
7 was a high drug area and he initiated the
8 plan and assignment for the arrest.

9 Q. And how many officers were involved in this
10 operation?

11 A. Approximately 20.

12 Q. Explain to the Court what you do next after
13 11:30, 11:45. You are at this location
14 meeting with other officers, how do you
15 proceed, describe what happens.

16 A. Once -- well, Agent Hopper from the Violent
17 Crimes Task Force had a briefing with all
18 officers. Each officer was assigned a
19 partner and an area in the location of
20 Wirt Street that they were going to
21 cover, the side of the house, the back of
22 the house, the alley, street. Once those

1 assignments were made and everybody, it
2 was clear, then we proceeded in a caravan
3 to the address of Wirt Street, to effect
4 the arrest.

5 Q. Well, how was that accomplished? Who said
6 what, how did he get out of the house and
7 where did you locate yourself?

8 A. Once we arrived at the scene, the house was
9 surrounded by law enforcement personnel,
10 and Youngstown Police Department was on
11 the scene to assist us with traffic in
12 closing the roadway. Agent Hopper placed
13 his vehicle in the middle of the roadway
14 at an angle, communicated to the
15 residents inside the Wirt Street address
16 with a microphone and advised Nathaniel
17 Jackson to come out of the house, the
18 house was surrounded by law enforcement,
19 that there was a warrant for him to come
20 out of the house.

21 Q. Now, this house, would you describe the house?

22 A. It is an older type home, two story brick.

1 Normal size, maybe a little bit bigger
2 than a Cape Cod.

3 Q. Would you describe this as an older
4 residential area?

5 A. Yes.

6 Q. And for the Court's understanding, can you
7 describe where Wirt Street is in
8 Youngstown?

9 A. Wirt Street runs between Belmont Avenue and
10 422 and the closest mark would be near
11 St. E's Hospital.

12 Q. There's a 680 bypass off of 422, is that close
13 to where Wirt Street goes?

14 A. Yes.

15 Q. And does it go up towards Earl Schieb, which
16 is a place that does business on Belmont?

17 A. Yes.

18 Q. And so it runs more or less north and south?

19 A. That is correct.

20 Q. And therefore, St. Elizabeth's would be to the
21 east?

22 A. That is correct.

1 Q. And this home was located on the east or the
2 west the side of the road?

3 A. It would be the east side of the road.

4 Q. And when Lee Hopper and others indicated by
5 name Nathaniel Jackson to come out, did
6 the police identify themselves?

7 A. Yes.

8 Q. Were there police cars there?

9 A. Yes.

10 Q. Were there policemen in uniform?

11 A. Yes.

12 Q. And this process, was a megaphone or what was
13 used?

14 A. A bullhorn.

15 Q. And did people come out of this residence?

16 A. After about 15 minutes, yes.

17 Q. Were there any shots or any force used?

18 A. No.

19 Q. It was peaceful?

20 A. Yes.

21 Q. And did Nathaniel Jackson come out?

22 A. Yes, he did.

1 Q. Do you see Nathaniel Jackson today?

2 A. Yes, I do.

3 Q. Would you point him out for Judge Stuard?

4 A. He's sitting at the Defendant's table with his
5 Attorneys, Jim Lewis and Tony Consoldane.

6 MR. WATKINS: May the record reflect
7 the Defendant has been selected?

8 THE COURT: The record will so
9 reflect.

10 Q. Now you indicated to the Court you had seen
11 photographs of him prior to that time?

12 A. Yes.

13 Q. Now, describe where you first see, and by the
14 way, what time is it now?

15 A. Right now it is approximately pretty close to
16 midnight on the 21st.

17 Q. So, we're in the next day?

18 A. Yes.

19 Q. Describe what occurs and how you see him.

20 A. After approximately ten to 15 minutes
21 negotiating through the bullhorn,
22 Nathaniel Jackson came out of the front

1 door of the residence with his hands up,
2 walking backwards, as he was instructed
3 to by Agent Hopper.

4 Q. How far did he walk outside of the house
5 backwards?

6 A. Approximately 15 feet.

7 Q. And did he ever go down any steps?

8 A. There was approximately three to four concrete
9 stairs.

10 Q. And his hands are up?

11 A. Yes.

12 Q. And these are per the instructions of Lee
13 Hopper?

14 A. Yes.

15 Q. Hands up and he's walking backwards?

16 A. Yes.

17 Q. Did you notice any inability from any physical
18 or physiological problem that he couldn't
19 follow those instructions?

20 A. No.

21 Q. He's able to do that?

22 A. Yes.

1 Q. Now, when he had his hands up, did you notice
2 anything unusual about his hands?

3 A. Yes, on his left front index finger, he had a
4 white bandage wrapped around. It was
5 pretty thick.

6 Q. To your knowledge, from the affidavit or from
7 the information you had, was the fact
8 that the finger was bandaged relevant to
9 you?

10 A. Yes.

11 Q. Why was that?

12 A. Because information that was provided through
13 the investigation was that he was shot in
14 the finger.

15 Q. During the homicide?

16 A. Yes.

17 Q. Now, where does he go?

18 A. At that time, once he reached the sidewalk in
19 front of the house, he was instructed to
20 walk backwards towards me which was about
21 ten to 15 feet away. He did that good
22 and then once he came within arm's reach

1 of myself, he was handcuffed behind the
2 back and placed into custody.

3 Q. And did you inform him for the reason that he
4 was under arrest?

5 A. Yes.

6 Q. What did you tell him?

7 A. That he's under arrest and that I was going to
8 place him in the back of this marked
9 Youngstown police unit that was parked in
10 the street.

11 Q. Did you tell him what the charges were?

12 A. Yes.

13 Q. What did you tell him?

14 A. For aggravated murder.

15 Q. Did you tell him you had a warrant?

16 A. Yes.

17 Q. Who transported him in that vehicle?

18 A. He was placed into the marked Youngstown
19 police cruiser in the rear along with
20 myself -- the uniformed officers from
21 Youngstown Police Department was
22 directing traffic, and Captain Gary Bacon

1 called for a marked Trumbull County
2 Sheriff's unit to pick myself and
3 Nathaniel Jackson up at the scene, and
4 transport to the Trumbull County jail.

5 Q. In the vehicle, did you have any conversation
6 with him?

7 A. Yes, I did.

8 Q. Did you, during that conversation, advise
9 Nathaniel Jackson of his Constitutional
10 rights under the Miranda decision?

11 A. Yes, I did.

12 Q. Would you tell Judge Stuard what you said to
13 him?

14 A. I told Nathaniel Jackson that he was under
15 arrest for aggravated murder, there was a
16 warrant for him. That he had the right
17 to remain silent, and anything he said
18 could be used against him, and that if he
19 could not afford an attorney, one would
20 be provided for him.

21 Q. You told him he had a right to an attorney?

22 A. Yes, I did.

1 Q. And if he couldn't afford one, he would have
2 one appointed?

3 A. Yes, I did.

4 Q. You are positive?

5 A. Yes, Sir.

6 Q. And was he able, during this conversation in
7 the car from your perception, to
8 understand your conversation and respond?

9 A. Yes, Sir.

10 Q. Did you smell any alcohol?

11 A. No.

12 Q. Did you notice anything about him that would
13 indicate that he was under any
14 disabilities?

15 A. No.

16 Q. After you orally -- and I take it, did you
17 have a rights form?

18 A. Not with me.

19 Q. And after you gave him his rights, what did he
20 say?

21 A. May I refer to my notes?

22 Q. Yes, you may. If your notes reflect an

1 accurate summary -- that is what they do?

2 A. Yes, Sir.

3 Q. Okay.

4 A. "Nathaniel Jackson stated that, man, I did not
5 kill anybody, man, and asked that he has
6 the right to an attorney at any time. I
7 advised him yes, he has the right to an
8 attorney. Nathaniel said, man, I was on
9 the phone with Donna and looked out the
10 window and sees all of the police cars
11 and wondered what was going on. I
12 advised Nathaniel that Donna Roberts had
13 snitched him out and that is how we knew
14 where to find him and she agreed to make
15 the phone call to verify that you were in
16 the house. Nathaniel said, man, I did
17 not kill nobody. I advised Nathaniel
18 that Donna was at the Trumbull County
19 Jail and was cooperating with
20 investigators, and told them all about
21 the murder of her husband Robert and that
22 when we got to the Trumbull County Jail,

1 that he would have a chance to tell his
2 side of the story and would be asked some
3 questions. Nathaniel said, man, I cannot
4 believe that she did that to me. I told
5 Nathaniel once again that Donna told us
6 everything, and that he would have an
7 opportunity to tell investigators his
8 side of the story."

9 Q. Now, this summary, which I'm going to hand to
10 you as Exhibit 1, would you describe that
11 copy to the Court?

12 A. This is a copy of my investigative notes.

13 Q. And when did you make those notes?

14 A. During the investigation.

15 Q. And would you explain for Judge Stuard's
16 benefit how do you make notes?

17 A. What we do initially is we write things down
18 on a legal pad, and as we go through the
19 investigation and then once we get to a
20 point to where the investigation is over,
21 we take the handwritten notes and type
22 them into a computer and those are our

1 record and then we get rid of the
2 handwritten notes.

3 Q. The handwritten notes were made by you at the
4 time?

5 A. Yes.

6 Q. And then they were typed out?

7 A. That is correct.

8 Q. And when did you turn those over to my office?

9 A. Approximately two weeks ago.

10 Q. So, it took you some time to get those
11 prepared, as far as on print form or
12 typed form?

13 A. Yes.

14 Q. Now, you tell Judge Stuard that he stated
15 that, "I didn't kill anybody," is that
16 correct?

17 A. Yes, Sir.

18 Q. When you are taking this information during
19 this car ride with you and Hoson, are you
20 asking questions of him or is he
21 volunteering things to you?

22 A. At this point once -- this conversation took

1 place in the rear of the Youngstown
2 police marked unit. When officer Hoso
3 arrived there was no conversation between
4 myself and Nathaniel Jackson.

5 Q. So, this is in the Youngstown car, and for the
6 Judge's benefit, were you interrogating
7 him and asking questions or was he
8 volunteering things after he was given
9 his Miranda warning?

10 A. I was not interrogating him or asking him
11 questions. He volunteered this
12 information after his Miranda warning.

13 Q. Then you told him about Donna was snitching on
14 him?

15 A. Yes.

16 Q. And he was responding?

17 A. Yes.

18 Q. Now, how long do you talk to him in that
19 police cruiser that belongs to Youngstown
20 Police Department?

21 A. He was taken into custody at 10 after midnight
22 on the 21st. And we were en route to the

1 Trumbull County jail from the scene at 29
2 minutes after midnight, approximately 27,
3 28 minutes.

4 Q. And you are proceeding to the Trumbull County
5 jail?

6 A. Yes.

7 Q. And approximately what time do you arrive at
8 the Trumbull County jail?

9 A. Approximately 12:45 A.M.

10 Q. On the 21st of December?

11 A. That is correct.

12 Q. And where is Jackson taken?

13 A. Jackson was taken into the Trumbull County
14 jail. He was placed into the weight
15 room. And Sergeant Dillon from the
16 Howland Police Department sat there with
17 him along with a corrections officer.

18 Q. And how long would you say he was there in the
19 weight room?

20 A. Approximately one hour.

21 Q. You are in the weight room at 12:45. You
22 arrive at the jail at 12:45, is that

1 correct?

2 A. Yes.

3 Q. And what time are you taking a statement from
4 him?

5 A. 2:13 A.M. on the 21st.

6 Q. During that period of time to your knowledge,
7 at least in the weight room, were any
8 statements being obtained or any effort
9 to obtain statements being made?

10 A. No.

11 Q. During the ride back or during any time that
12 you were aware in the weight room, did
13 Nathaniel Jackson, did the Defendant make
14 any complaints?

15 A. No.

16 Q. Did he ask to see an attorney or not cooperate
17 or not talk?

18 A. No.

19 Q. Would you describe him as -- what was his
20 attitude?

21 A. His demeanor, he was very polite, very
22 cooperative. Very alert. Really didn't

1 have any complaints.

2 Q. Was he nervous, intimidated by the fact he was
3 in police custody?

4 A. No.

5 Q. At least you didn't perceive that?

6 A. I didn't perceive that.

7 Q. Did there come a time that it was decided that
8 you or anybody else was going to talk to
9 him further about this matter?

10 A. Yes, there was.

11 Q. Who made that decision?

12 A. The decision was made by -- there was a
13 meeting between myself, Captain Bacon,
14 Major Phillips and Detective Monroe from
15 Howland P.D. The decision was made that
16 myself and Detective Monroe would do the
17 interview with Nathaniel Jackson.

18 Q. Where does that take place?

19 A. Inside the Trumbull County Sheriff's
20 department, Captain Bacon's office.

21 Q. Approximately what time did the start of that
22 interview occur?

1 A. Approximately 13 minutes -- well, 2:13 A.M.

2 Q. Was there any conversation before it went on
3 tape at 2:13?

4 A. Yes.

5 Q. What time was that?

6 A. Approximately 1:45 A.M.

7 Q. Where was that?

8 A. Captain Bacon's office.

9 Q. There was a conversation prior to the tape?

10 A. Yes.

11 Q. So, you are correcting yourself?

12 A. Yes.

13 Q. So, approximately 1:45, which is approximately
14 one hour and 45 minutes after his arrest,
15 you now have him in Captain Bacon's
16 office and you and Detective Sergeant
17 Monroe are talking to him?

18 A. Yes.

19 Q. And did you give him any coffee or any
20 cigarettes, anything transpire as far as
21 comforts for him?

22 A. He was asked if he wanted something to drink,

1 provided with coffee and a few
2 cigarettes.

3 Q. Tell the Court what conversation occurs at
4 1:45 or thereafter?

5 A. May I refer to my notes from Detective Monroe?
6 Prior to entering the room with Nathaniel
7 Jackson, I advised Detective Monroe that
8 I had given Nathaniel Jackson his rights
9 in the rear of the marked police unit of
10 the Youngstown Police car and Nathaniel
11 went on to say that he was at Greyhound
12 bus station in Warren on the day of the
13 murder. He had dinner with Donna
14 Roberts. After dinner, Donna dropped him
15 off at Sheila's house on Wirt Street in
16 Youngstown. And then once he got there,
17 he went for a walk in downtown
18 Youngstown. And he walked to the
19 Greyhound bus terminal in Youngstown, and
20 he seen Robert Fingerhut loading a bus.
21 He got in a conversation at the terminal
22 with Robert Fingerhut regarding Nathaniel

1 Jackson to get employment with Greyhound
2 bus. He stated that Robert Fingerhut
3 wanted to purchase \$100 worth of
4 marijuana, and that once Robert Fingerhut
5 got off work, he would meet Nathaniel
6 Jackson at C Staples in the parking lot,
7 which is a barbeque facility in
8 Youngstown, Ohio. After Robert Fingerhut
9 got off work, he arrived at C Staples in
10 his silver Chrysler. Nathaniel Jackson
11 got into the car with Robert Fingerhut,
12 sold him some marijuana, and then they
13 got into more conversation and Nathaniel
14 Jackson asked Robert Fingerhut if he
15 could hang out with him for a while, and
16 go back to his place. So, Robert
17 Fingerhut and Nathaniel Jackson travel to
18 the residence of Robert Fingerhut on
19 Fonderlac Drive in Howland Township.
20 They pull the car -- Robert Fingerhut
21 pulls the car into the garage with
22 Nathaniel Jackson as a passenger. They

1 went into the residence, and they went
2 into the kitchen area. Robert Fingerhut
3 and Nathaniel Jackson got into a
4 conversation. Nathaniel stated that
5 Robert Fingerhut was starting to down
6 play him, like for an example, "Black
7 people never get ahead, and that you guys
8 never do nothing right." And Nathaniel
9 Jackson stated that he got upset over
10 that and he thought that that was
11 offensive. And then all of a sudden,
12 Robert Fingerhut pulls out a gun and
13 shoots Nathaniel Jackson in the left fore
14 finger, index finger.

15 Q. That is the one that had the bandage on it?

16 A. Yes, left index finger. At that time, a
17 struggle ensued with Mr. Fingerhut and
18 Nathaniel Jackson. Nathaniel Jackson
19 took the gun off Robert Fingerhut and
20 shot him twice. Nathaniel also stated
21 that Mr. Fingerhut was still living,
22 still breathing, he could hear him

1 gurgling. Then Nathaniel Jackson leaves
2 the residence, jumps into the Chrysler,
3 silver Chrysler of Robert Fingerhut, and
4 drives to Youngstown, Ohio to Wirt
5 Street. And during that ride from Robert
6 Fingerhut's residence to Sheila's house
7 on Wirt Street, he disposed of a gun
8 somewhere on Route 82.

9 Q. Now that is a summary of what you recall
10 referring to your notes?

11 A. Yes.

12 Q. Now, I'm going to hand you what has been
13 marked as State's Exhibit 2. That is a
14 summary made by Detective Monroe, a copy
15 thereof, and can you identify that
16 document?

17 A. This is a summary done by Detective Sergeant
18 Monroe from the Howland Police
19 Department. This is a fair and accurate
20 summary interview of myself and Detective
21 Monroe's interview prior to the video
22 interview.

1 Q. Did you personally make notes of this
2 particular interview?

3 A. I think that Detective Monroe made them, took
4 the notes. I didn't take notes.

5 Q. So, because it was his case, you were
6 participating with him?

7 A. Yes.

8 Q. And he was more or less the person that
9 started the conversation?

10 A. He would be the lead investigator, lead
11 interrogator.

12 Q. Now had a you chance to look -- well, have you
13 seen this before?

14 A. Yes.

15 Q. And that is an accurate summary of a
16 conversation between the Defendant, you
17 and Monroe, between 11:45 and 2:13 or
18 thereabouts?

19 A. Yes.

20 Q. On that day in question?

21 A. Yes, Sir.

22 Q. No doubt in your mind that is complete, an

1 accurate summary?

2 A. No doubt in my mind.

3 Q. Now I notice the summary contains a little bit
4 more than what you told Judge Stuard.

5 A. That is correct.

6 Q. Because you did not read verbatim, is that
7 correct?

8 A. That is correct.

9 Q. And for example, there was a point that when
10 the Defendant alleged that he was being
11 talked down to that he asked to go back
12 to the hood?

13 A. Yes.

14 Q. This was in line with the conversation that
15 you had in the car at the Youngstown P.D.
16 somewhere after 12:00 midnight where you
17 said that he would be given an
18 opportunity to tell you what his side was
19 or his version was?

20 A. Yes.

21 Q. And when he was in the car, he agreed to that?

22 A. Yes.

1 Q. He said that is okay?

2 A. Yes.

3 Q. So, and this was asked of him in the car after
4 he had been given his rights, is that
5 correct?

6 A. That is correct.

7 Q. And at no time did he assert his
8 Constitutional rights throughout this
9 period of time as far as we have gone?

10 A. No.

11 Q. Now it comes somewhere about 2:13 A.M.

12 A. Yes.

13 Q. Is there an effort at this point or do you or
14 Monroe in fact provide the Defendant with
15 a written form that has his
16 Constitutional rights under the Miranda
17 decision?

18 A. Yes.

19 Q. And I'm going to hand you what has been marked
20 as State's Exhibit 3. Can you identify
21 State's Exhibit 3?

22 A. Yes, this is a Constitutional rights Miranda

1 waiver that was read by Detective Monroe
2 to Nathaniel Jackson in my presence, on
3 video, at the Trumbull County Sheriff's
4 department.

5 Q. It says Captain Bacon's office, 12-21-01 at
6 2:13 A.M?

7 A. Yes.

8 Q. Whose handwriting is that?

9 A. Detective Paul Monroe.

10 Q. I notice that after his rights are given, for
11 example, "You must understand your
12 rights, you have a right to remain silent
13 and anything you can say could be used
14 against you. You have the right to talk
15 to a lawyer for advice before we ask any
16 questions, to have him with you during
17 questioning. If you can not afford a
18 lawyer, one will be appointed before any
19 questions, if you wish. If you decide to
20 now answer questions without a lawyer
21 present, you still have the right to stop
22 at any time. And also you have a right

1 to stop at any time and talk to a
2 lawyer," is that correct?

3 A. Yes.

4 Q. There's six lines with N.J., is that correct?

5 A. Yes.

6 Q. This is a copy of the original document?

7 A. Yes.

8 Q. It is an accurate copy?

9 A. Yes, Sir.

10 Q. Who put the N.J.?

11 A. Nathaniel Jackson.

12 Q. So, that indicates that when you talk to an
13 individual, that you go over each
14 Constitutional provision, and if he
15 understands them, he puts his initials?

16 A. Yes.

17 Q. Then you have waiver of rights, "I have read
18 or have had read to me, my Constitutional
19 rights," and without going through all of
20 this dealing with that he didn't want a
21 lawyer, there's been no promises or
22 threats, and were there any promises or

1 threats made at any time?

2 A. No.

3 Q. It says, "I waive my rights and agree to make
4 a statement," is that correct?

5 A. Yes.

6 Q. It says waiver of rights?

7 A. Yes.

8 Q. Did the Defendant sign this waiver?

9 A. Yes, he did.

10 Q. Before you went on film, was he given an
11 opportunity to see this statement or was
12 it given to him while it was being
13 videoed?

14 A. It was given to him while it was being
15 videoed.

16 Q. And it was read to him according to your
17 testimony, is that correct?

18 A. Yes, Sir.

19 Q. And then who signs the waiver?

20 A. Nathaniel Jackson signs the waiver, and it is
21 witnessed by myself and Detective
22 Sergeant Paul Monroe.

1 Q. And that is at 2:15 A.M., is that correct?

2 A. Yes.

3 Q. And that is State's Exhibit 3?

4 A. Yes.

5 Q. And that is your signature as a witness?

6 A. Yes, Sir.

7 Q. Who set up the video?

8 A. Captain Bacon from the Trumbull County
9 Sheriff's department.

10 MR. WATKINS: At this point, either
11 a short recess or we'll start playing the tape,
12 which is about 55 minutes long.

13 THE COURT: Let's take a ten minute
14 break.

15 (Resumed in Open Court at 10:40 A.M.)

16 MR. WATKINS: I'm going to hand you
17 State's Exhibit 5, which is a video that has been
18 talked about and testified to previous to our break
19 by Sergeant Hoolihan. It is my understanding that
20 the tape will be played once the appropriate
21 foundation is made, and then it would be
22 unnecessary for the Court Reporter to take it down,

1 since the tape speaks for itself.

2 MR. LEWIS: Agreed.

3 THE COURT: Thank you.

4 Q. (By Mr. Watkins) I'm going to hand you what

5 has been marked as State's Exhibit 5.

6 And that is what?

7 A. This is the video taped interview of Nathaniel
8 Jackson.

9 Q. And you talked about the Miranda warning being
10 given and that you and Detective Paul
11 Monroe were present in Captain Bacon's
12 office on the 21st of 2001, December 21,
13 2001, is that correct?

14 A. Yes, Sir.

15 Q. And the tape lasted approximately one hour?

16 A. Yes, Sir.

17 Q. And this tape is taken while you and Sergeant
18 Monroe and the Defendant are the only
19 ones present?

20 A. Yes, Sir.

21 Q. And after the tape was made, did you have an
22 occasion to look at the tape?

1 A. Yes, Sir.

2 Q. Did you have an occasion to go through a
3 transcript?

4 A. Yes, Sir.

5 Q. And did you have an occasion in fact to make
6 some corrections?

7 A. Yes, Sir.

8 Q. And it was last week or early this week?

9 A. It was the end of last week.

10 Q. And that is what has been forwarded to Defense
11 counsel and the Court and it says REV on
12 the transcript, and I'm going to hand you
13 what has been marked as State's Exhibit
14 4, and it is your testimony that you
15 looked at State's Exhibit 5 and this is a
16 copy thereof, and then you looked at a
17 transcript that was not made by you?

18 A. That is correct.

19 Q. And you went through to the best of your
20 ability to make sure that the transcript
21 was accurate with the tape recording, is
22 that correct?

1 A. Yes, Sir.

2 Q. And was the tape recording that you reviewed
3 and the transcription that you corrected
4 and the one that is now offered as
5 Exhibit 4, contain everything that
6 occurred on that Friday in December, and
7 were there -- first, was that everything
8 that occurred?

9 A. Yes.

10 Q. Any deletions, any additions as far as the
11 tape?

12 A. No.

13 Q. The point is this tape is accurate and there
14 was never any editing of the tape?

15 A. No editing.

16 Q. And you will have an opportunity to see the
17 tape once again to see, to insure that
18 this is the total tape?

19 A. Yes, Sir.

20 MR. WATKINS: With the Court's
21 permission, I'll play State's Exhibit 5 that has
22 been identified by the witness.

1 THE COURT: Please proceed.
2 (State's Exhibit 5, video tape played for the Court
3 at this time.)

4 THE COURT: For the record, the
5 Court has watched the video tape.

6 Q. (By Mr. Watkins) Detective Hoolihan, you
7 reviewed with all of the parties and the
8 Court the video tape that has just been
9 played?

10 A. Yes.

11 Q. And that is the video tape that you described
12 before it was played?

13 A. Yes.

14 Q. And it is an accurate and complete video?

15 A. Yes.

16 Q. Now, during the time that you gave at the
17 beginning, the rights to the Defendant,
18 did you make a determination whether he
19 could read or write?

20 A. Yes.

21 Q. And was that determination in part based on
22 letters that you had read?

1 A. Yes.

2 Q. And you indicated that, to the Court, that you
3 went from Youngstown to the Trumbull
4 County jail and he never was booked, is
5 that correct at that point?

6 A. That is correct.

7 Q. So, he was booked into jail after this
8 statement was completed?

9 A. Yes.

10 Q. And within approximately three hours of his
11 arrest?

12 A. That is correct.

13 Q. And who booked him into Trumbull County jail
14 for aggravated murder?

15 A. I'm not sure who did it.

16 Q. You did not?

17 A. That is correct.

18 MR. WATKINS: I have no further
19 questions.

20 THE COURT: Let's come back at 1:00.

21 (Court in recess at 11:50 A.M.)

22 (Resumed in Open Court at 1:05 P.M.)

1 CROSS EXAMINATION OF MR. HOOLIHAN BY MR. LEWIS:

2 Q. Officer Hoolihan, you indicated, I believe
3 that you got involved in this case, was
4 it on December 13th?

5 A. Yes, Sir.

6 Q. 2001. You can refer to those notes. As a
7 result, was this a task force type
8 operation -- in other words, if there was
9 a murder or homicide. Was it the
10 Trumbull County task force that was
11 involved or did you become involved
12 because something referred back into
13 Warren, Ohio here?

14 A. Actually there were three reasons why I got
15 involved. The first reason was because I
16 received a phone call from Sergeant
17 Dillon from Howland Police Department and
18 he wanted me to pull the theft report
19 from Donna Roberts regarding the theft of
20 a gun.

21 Q. That was allegedly a weapon stolen or taken
22 from her by a Santiago Mason, is that

1 correct?

2 A. Yes, Sir. The second reason would be because
3 there were some interviews that needed to
4 be conducted at the Greyhound bus
5 terminal located in Warren, Ohio on West
6 Market Street, and thirdly, because I am
7 a member of the Trumbull County homicide
8 task force and I was asked to assist in
9 the investigation.

10 Q. So, we have got three reasons why you got
11 involved in this?

12 A. Yes, Sir.

13 Q. And you did in the meantime, shortly after
14 being involved, you did check out the
15 Santiago Mason, that report in regard to
16 him supposedly taking the weapon and so
17 forth?

18 A. Yes, Sir.

19 Q. You also did go to the Greyhound bus station
20 to conduct some interviews?

21 A. Yes, Sir.

22 Q. And you also did a records check, of course,

1 in regard to the Defendant, Mr -- well,
2 the Defendant, I mean you did a records
3 check --

4 A. A criminal history background.

5 Q. Okay. As a result of that, did it come out in
6 a LEADS form or combination of both?

7 A. The one that I would refer to that I did would
8 be the Warren Police Department. It is
9 like a public global inquiry.

10 Q. That one is a public one?

11 A. Yes, Sir.

12 Q. Was there any hits on that?

13 A. Well, there was a record there, but I can't
14 tell you what it said.

15 Q. And there was the LEADS, you did the LEADS,
16 also?

17 A. I did not.

18 Q. So, you really just did the local?

19 A. Yes, Sir.

20 Q. And the next event of importance came on
21 December 20, is that correct?

22 A. Yes, Sir.

1 Q. Do you happen to recall what day of the week
2 that was by any chance?

3 A. I believe it was a Thursday.

4 Q. And on that date, there was a warrant secured
5 for the arrest of Nathaniel Jackson?

6 A. Yes, Sir.

7 Q. And that was a warrant issued by Judge Stuard,
8 is that correct?

9 A. Yes, Sir.

10 Q. And the warrant indicated that the crime for
11 which the warrant was issued was
12 aggravated murder?

13 A. Yes, Sir.

14 Q. And did you physically take possession of that
15 warrant?

16 A. No, Sir.

17 Q. Do you know who did?

18 A. I believe Detective Sergeant Paul Monroe and
19 Sergeant Frank Dillon of the Howland
20 Police Department.

21 Q. So, when you went to Youngstown that night,
22 then Officer Monroe had the warrant?

1 A. Officer Monroe did not go to Youngstown.

2 Q. Did anybody go into Youngstown? Did they have
3 the warrant?

4 A. Not that I am aware of.

5 Q. That same night, prior in time to going to
6 Liberty, and in the staging area for the
7 SWAT team, you indicated statements were
8 taken from Donna Roberts?

9 A. Yes, Sir.

10 Q. As a result of her cooperation, the phone call
11 was supposed to be placed to this Wirt
12 Street address to find out if Nathaniel
13 Jackson was in fact there and to possibly
14 keep him on the phone, right?

15 A. Yes, Sir.

16 Q. So, that was the plan to make sure he was
17 there and maybe keep him on the phone
18 while the police encircled the area; is
19 that basically it?

20 A. Yes, Sir.

21 Q. And you indicated there was probably about 20
22 officers involved?

1 A. Yes, Sir.

2 Q. And a bullhorn was used and everybody in the
3 house was told to come out?

4 A. Yes, Sir.

5 Q. With their hands up or something to that
6 effect?

7 A. That is correct.

8 Q. And how many people came out to your
9 recollection?

10 A. I believe there were three, including
11 Nathaniel.

12 Q. And as you indicated, they were told to come
13 out, hands up and actually asked him to
14 walk backwards?

15 A. Yes.

16 Q. And all of the people did that?

17 A. Yes, Sir.

18 Q. Was there any attempt from that point or that
19 point forward or that point back where
20 Nathaniel Jackson was attempting to
21 escape or to run or anything of that
22 nature?

1 A. No, Sir.

2 Q. And once he came out of the house, what did
3 you do?

4 A. He was ordered to walk towards me by Agent
5 Hopper from the Violent Crimes Task Force
6 in which he complied. Once he came
7 within arm's reach of myself, I
8 handcuffed him.

9 Q. And what did you do after you handcuffed him?

10 A. I searched him.

11 Q. Did you find anything on him?

12 A. No.

13 Q. Did you do anything else at that point?

14 A. At that time, Captain Bacon walked over. He
15 was secured in the rear of a Youngstown
16 police marked unit. That was in the
17 middle of the road blocking traffic and
18 myself and Nathaniel were in the back
19 seat.

20 Q. Well, he was secured in the back seat of the
21 cruiser, right?

22 A. He was secured in the back seat of the

1 cruiser. I was sitting next to him and
2 Captain Bacon called for a marked
3 Trumbull County Sheriff's deputy unit to
4 come and pick us up.

5 Q. Why did you get in the back of the car with
6 him? Is there any special reason? The
7 doors are locked and the screen is up?

8 A. He was a prisoner and I had to stay with him.

9 Q. What happened next?

10 A. At that time, the members of the task force
11 along with the SWAT team were still
12 having people removed from the residence,
13 securing the scene. Once the persons
14 were removed from the house, an entry was
15 made and several law enforcements entered
16 the residence to check for other persons
17 and make sure that there were no weapons
18 or any danger to the officers' safety.

19 Q. Was the house searched then, basically?

20 A. Yes, it was.

21 Q. Did you have a search warrant or anything for
22 the house?

1 A. No, Sir.

2 Q. And at the time they went in and searched the
3 house, the occupants were already
4 outside, is that correct?

5 A. Yes, Sir.

6 Q. And Nathaniel was in the back of a Youngstown
7 police cruiser?

8 A. During the search -- what search are you
9 talking about?

10 Q. I am talking about the search of the house?

11 A. At that time, I believe we were in the back of
12 the cruiser and getting ready to go back
13 to Trumbull County jail.

14 Q. And you are in the back of the cruiser, and
15 there was a call made to the Sheriff's
16 department for transport?

17 A. Yes, Sir. It would have been the 911 dispatch
18 center.

19 Q. Who responded in regard to that transport?

20 A. Deputy Jeff Hoso.

21 Q. And when Officer Hoso arrived, what did you do
22 then?

1 A. He came over to the Youngstown police cruiser,
2 myself along with him, put Nathaniel
3 Jackson in the rear of the marked
4 Trumbull County Sheriff's deputy unit,
5 and I then got into the back seat with
6 Nathaniel and Deputy Hosso, then went to
7 the Trumbull County jail.

8 Q. So, you rode along with Mr. Jackson?

9 A. Yes, Sir.

10 Q. Were you in the back or in the front of the
11 cruiser?

12 A. I was in the back.

13 Q. What if anything happened in the back of the
14 cruiser, anything?

15 A. Nothing.

16 Q. Let's get back, when I was asking you what
17 were you doing and what happened, you --
18 let's go back to Youngstown. Did any
19 conversation occur between you and
20 Nathaniel Jackson when the handcuffs were
21 put on him?

22 A. Well, I told him that I was going to put him

1 in the back of this marked unit until
2 another cruiser arrived.

3 Q. And that is what you did?

4 A. Yes.

5 Q. So, in essence, that is the entirety of it?

6 A. Right.

7 Q. So then you are being transported by Jeff
8 Hoso. He's driving the Trumbull County
9 Sheriff's car, you are in the back seat
10 with Nathaniel and he's being brought to
11 the Sheriff's department, correct?

12 A. Yes, Sir.

13 Q. And the best recollection of time on that
14 is -- I have got 12:29 here.

15 A. 12:29 would be the time that Jeff Hoso arrived
16 to transport myself and Nathaniel Jackson
17 to the Trumbull County jail.

18 Q. I have another time written down here, 12:45
19 arrived. Is that when you arrived?

20 A. That is correct.

21 Q. Did you have any conversation with Mr. Jackson
22 in the car enroute from the Youngstown

1 scene at Wirt Street to the Trumbull
2 County jail?

3 A. No.

4 Q. And he was actually placed under arrest or he
5 was secured in custody in Mahoning
6 County, was he not?

7 A. Yes, Sir.

8 Q. Once you got Mr. Jackson to the Sheriff's
9 department, you indicated that he was
10 placed in a weight room. You mean a
11 weight lifting weight room?

12 A. Yes, what happened there, when we arrived
13 there, the Sheriff's Department Detective
14 Bureau was locked. Each office has a
15 separate key. The place was locked down.
16 The only access that we could have gained
17 was from the rear door entrance into the
18 hallway. So, there was no place to put
19 Nathaniel Jackson unless we put him in
20 the jail, which at that time, we didn't
21 want to do, so we placed him into the
22 weight room until Captain Bacon could

1 finish at the scene on Wirt Street and
2 return to the Trumbull County Sheriff's
3 department to open the doors.

4 Q. So, Officer Bacon had the key, but he was
5 still at Wirt Street in Youngstown?

6 A. Yes.

7 Q. In any event, he was placed in the weight
8 room? Who was placed in there with him?

9 A. Sergeant Dillon was in there. He was the last
10 person that I saw him with.

11 Q. And Sergeant Dillon, what police department is
12 he from?

13 A. Howland Police Department.

14 Q. Is that room, do you have any audio to that
15 room or when the door is closed, could
16 you hear what was going on?

17 A. The door was opened into the entrance of the
18 weight room.

19 Q. And where did you go during the time that he
20 was in there with Officer Dillon?

21 A. I went down the hall to the lobby area where
22 they have coffee, vending machines and so

1 forth.

2 Q. Do you have any idea whether Mr. Jackson and
3 Mr. Dillon had any conversation or not?

4 A. None that I believe so.

5 Q. None that you heard?

6 A. None that I am aware of.

7 Q. So, it would could have been that Officer
8 Dillon did talk to Mr. Jackson?

9 A. I'm not aware of that.

10 Q. I know you are not aware of it, but he was in
11 the room alone with Officer Dillon and
12 you were down at the other end with the
13 coffee and the cream and so forth, so he
14 could have talked to him and you wouldn't
15 know it, right?

16 A. That is correct.

17 Q. And a short time after that, I assume that
18 Officer Bacon arrived at the Sheriff's
19 department, right?

20 A. Yes.

21 Q. And was Officer Monroe also there -- did he
22 come? When did he come? He had to be

1 there.

2 A. When I arrived at the Trumbull County jail
3 with Nathaniel Jackson, Detective Dillon
4 and Sergeant Monroe were already there.

5 Q. So, Officer Monroe is there, Officer Bacon,
6 yourself, Officer Dillon is watching
7 Nathaniel Jackson in the weight room, and
8 what is it that you devised a plan or you
9 talked about what you are going to do
10 next, right, basically?

11 A. Well, it wasn't a short time when Captain
12 Bacon came back. It was some time. When
13 Captain Bacon arrived, he unlocked his
14 office and the room was to be -- to make
15 sure it was set up for interview and then
16 myself, along with Captain Bacon, Major
17 Phillips and Detective Monroe discussed
18 who was going to do the interview.

19 Q. In fact, I think you indicated that he was
20 probably in the weight room almost an
21 hour of time with Officer Dillon,
22 correct?

1 A. And I believe that once Captain Bacon arrived,
2 Nathaniel Jackson was transported from
3 the weight room to Captain Bacon's
4 office.

5 Q. And of course, that is where the video tape
6 was taken?

7 A. Yes, Sir.

8 Q. Once you determined what the procedure was
9 going to be, you wanted to question
10 obviously Mr. Jackson, correct?

11 A. Yes, Sir.

12 Q. And it was determined then I think that
13 Officer Bacon set the equipment up?

14 A. The equipment was set up prior to the
15 interview by Captain Bacon.

16 Q. So, it was determined that you and Officer
17 Monroe would be the ones to question
18 Mr. Jackson, is that correct?

19 A. Yes, Sir.

20 Q. And did you have any conversation with
21 Mr. Jackson before you started the video
22 tape?

1 A. Yes, we did.

2 Q. And when was that?

3 A. It was when we entered the interview room, I
4 brought him coffee and he was smoking a
5 cigarette, and we closed the door, and
6 sat down and started talking.

7 Q. And how did the conversation go, do you
8 remember?

9 A. The conversation is detailed in the summary of
10 Detective Monroe from Howland Police
11 Department.

12 Q. In other words, Officer Monroe was there as
13 well?

14 A. Yes.

15 Q. The three of you. Once you talked to
16 Mr. Jackson as it is outlined in the
17 Exhibit 1 -- 2, I'm sorry. Exhibit 2,
18 that is a summary of what the
19 conversation was when Officer Monroe and
20 yourself were talking to Mr. Jackson,
21 right?

22 A. Yes, Sir.

1 Q. After having that conversation, then you moved
2 on to the video tape, is that correct?

3 A. Yes, Sir.

4 Q. Let's go back now. When was the first time
5 you talked or had a conversation with
6 Mr. Jackson?

7 A. When he was placed into custody.

8 Q. And what did you tell him?

9 A. That I'm going to place him in the rear of the
10 Youngstown marked police unit.

11 Q. And after you put him or took him into custody
12 and put him in the police cruiser, what
13 did you tell him or what did he tell you?

14 A. May I refer to my notes?

15 Q. Yes. Incidentally, let me ask you, you say
16 you refer to your notes, those aren't
17 really the original notes, are they?
18 These are all typewritten?

19 A. Yes, Sir.

20 Q. I assume the original notes, I think you
21 mentioned something about a legal pad?

22 A. Yes, Sir.

1 Q. And that is normally what you would take along
2 with you for interviews or when you talk
3 to people or you talk to them in the
4 police station?

5 A. You keep them in your possession.

6 Q. You wanted to be able to take things down?

7 A. Right.

8 Q. Do you use tape recorders, cassette recorders?

9 A. Yes, Sir.

10 Q. And you use those for interviews with various
11 people, correct?

12 A. Yes, Sir.

13 Q. Do you ever use them for your own note taking
14 capabilities instead of writing something
15 down, you know how the lawyers walk
16 around and they are talking into their
17 recorders all the time just to remember
18 things. "I talked to John Doe, it was
19 Saturday at 12:00. He looked messed up.
20 He actually smelled like alcohol."

21 A. No, I don't use that method.

22 Q. You would be a note taker?

- 1 A. Yes, Sir.
- 2 Q. So, when you got into the police cruiser over
- 3 on Wirt Street in Youngstown, what did
- 4 you do with Mr. Jackson at that time?
- 5 A. Put him in the back of the police cruiser.
- 6 Q. What else did you do, anything else?
- 7 A. Just placed him in the back and sat in there
- 8 with him.
- 9 Q. That is the total extent of it?
- 10 A. Yes.
- 11 Q. Did you tell him anything?
- 12 A. Yes, after I advised him of his rights, I told
- 13 him some things.
- 14 Q. Let me ask you about advising of the rights.
- 15 How did you exactly do that?
- 16 A. From memory.
- 17 Q. By memory?
- 18 A. Yes, Sir.
- 19 Q. And you don't have the card?
- 20 A. I have a card, but I don't carry it with me.
- 21 Q. You had a legal pad though, right?
- 22 A. No.

1 Q. Didn't have anything out in the field?

2 A. No.

3 Q. There were 20 officers at the scene when
4 Mr. Jackson was taken into custody,
5 correct?

6 A. In the area, yes.

7 Q. And you indicated that you gave him his
8 rights?

9 A. Yes, Sir.

10 Q. And that was from memory?

11 A. Yes, Sir.

12 Q. And go ahead and give me those as you remember
13 giving them to Nathaniel that particular
14 night.

15 A. "You have the right to remain silent.
16 Anything you say can and will be used
17 against you. If you cannot afford an
18 attorney, one will be appointed for you."
19 That is what I told him.

20 Q. What happened after you gave him the rights as
21 you just gave them?

22 A. He started talking on his own.

1 Q. What did he tell you?

2 A. He stated that, "Man, I did not kill anybody,
3 man, and asked that he has the right to
4 an attorney at any time. I advised him
5 yes, he has the right to an attorney.
6 Nathaniel said, man, I was on the phone
7 with Donna and looked out the window and
8 sees all the police cars, and wondered
9 what was going on. I advised Nathaniel
10 that Donna Roberts had snitched him out
11 and that is how we knew where to find
12 him, and she agreed to make the phone
13 call to verify that you were in the
14 house. Nathaniel said, man, I did not
15 kill nobody. I advised Nathaniel that
16 Donna was at the Trumbull County Jail and
17 was cooperating with investigators and
18 told them all about the murder of her
19 husband, Robert, and that when we got to
20 the Trumbull County Jail that he would
21 have a chance to tell his side of the
22 story, and would be asked some questions.

1 Nathaniel said, man, I cannot believe
2 that she did that to me. I told
3 Nathaniel once again that Donna told us
4 everything, and that he would have an
5 opportunity to tell investigators his
6 side of the story."

7 Q. Obviously you didn't have anything in written
8 form, the rights form or anything else at
9 that point in time?

10 A. No, Sir.

11 Q. So there's nothing signed by him saying he was
12 given rights, correct?

13 A. No, Sir.

14 Q. There wasn't any tape recorder used when you
15 were talking to him advising him of his
16 rights and acknowledgment of rights, is
17 that correct?

18 A. Yes, Sir.

19 Q. You did not take the police cruiser microphone
20 and plug it in or turn it on, let's put
21 it that way and just have it recorded
22 over the system?

1 A. I have no authority to do that.

2 Q. It was a Youngstown police cruiser, you mean
3 if you asked them to do that, they
4 wouldn't do that?

5 A. No, Sir, because I believe that police radio
6 is used for emergency traffic and
7 communications. I wasn't aware of any
8 situation that the Youngstown Police
9 Department was involved in, so I think it
10 would be very odd for an unknown law
11 enforcement officer to come over a radio
12 and start talking.

13 Q. We just had Mr. Lucic do that in another case,
14 where he wanted the confession on record.
15 In any event, you got into a Sheriff's
16 cruiser, you still didn't do it in any
17 form or fashion?

18 A. No, Sir.

19 Q. Is that the entire extent of what you talked
20 to and told Mr. Jackson over on Wirt
21 Street?

22 A. Yes, Sir.

1 Q. That is the entirety of it? Was there
2 anything else that you may have told him?

3 A. No.

4 Q. I am talking from what I have asked you right
5 here. Is there anything else?

6 A. No, Sir.

7 Q. What you are telling me is you really didn't
8 tell him that he was under arrest for
9 aggravated murder or anything?

10 A. I told him that.

11 Q. That is what I'm asking you.

12 A. It is contained in my notes.

13 Q. Those aren't really the notes though, are
14 they?

15 A. Yes, they are.

16 Q. These are the notes you prepared that night?

17 A. These are the notes based on my conversation
18 with Nathaniel Jackson.

19 Q. Those aren't really the notes, the notes that
20 you wrote on the legal pad, is it?

21 A. No.

22 Q. That is a compilation in sentence form of what

1 your notes supposedly have in them,
2 right?

3 A. Yes, Sir.

4 Q. You do have your notes some place, in fact I
5 see the yellow paper, is that actually
6 the notes?

7 A. No, Sir, the notes are not here.

8 Q. But you do have those notes, right?

9 A. No, Sir. Once I put them in the computer, I
10 destroy them.

11 Q. Once you take the notes, then you destroy
12 them?

13 A. Yes, Sir.

14 Q. When did you put those into the computer and
15 produce the written form, the summary
16 here?

17 A. Approximately two to three weeks ago.

18 Q. This happened back on December 21st, right?

19 A. Yes.

20 Q. So, you are telling us that you didn't reduce
21 your notes into written or sentence form
22 until just two or three weeks ago?

1 A. That is correct.

2 Q. Then you went ahead and destroyed your notes?

3 A. Yes, Sir.

4 Q. So, we have to rely on that your notes, were
5 your notes as full and elaborate as what
6 the sentences are here?

7 A. What I do is when I take notes, I write down
8 on a legal pad and then I translate it
9 into the computer and that is a matter of
10 record.

11 Q. I understand. What I'm asking though, the
12 notes usually aren't written out in
13 sentence form or whatever. They are
14 notes, 12-21 walked backwards out of the
15 house, handcuffs. Police cruiser,
16 Mahoning County. Things like that.

17 A. The way I do notes, as I write it the way I'm
18 going to type it and say it.

19 Q. You are telling me that this is the way you
20 wrote the notes out?

21 A. Yes.

22 Q. And because they were placed in a computer,

1 you went ahead and destroyed your notes?

2 A. Yes.

3 Q. What was the reason for that?

4 A. That is a normal practice. When we take notes
5 and then we translate them into the
6 computer, we get rid of them.

7 Q. So, we don't really have the original notes
8 here?

9 A. No, Sir.

10 Q. We have what you have in the computer. Then
11 when you arrived back, you arrive with
12 Nathaniel Jackson and you are in the back
13 of the car with Officer Hoso and there's
14 no conversation that takes place, is that
15 correct, with Nathaniel Jackson?

16 A. That is correct.

17 Q. He's brought to the Trumbull County Sheriff's
18 department and he's placed in the weight
19 room?

20 A. Yes, Sir.

21 Q. Your intent is to question him, right?

22 A. Yes.

1 Q. You go in and the first thing you do is give
2 him his rights forms?

3 A. No, there was a conversation prior with him
4 and myself.

5 Q. Let me ask you something. We're at the
6 Sheriff's office. Officer Bacon came
7 back, he's the man with all of the keys.
8 He can get into all of the doors, all of
9 the offices. There's an office, his own
10 office where the equipment is set up or
11 whatever and this vast complex of the
12 Sheriff's office, there must be the
13 rights form. It is Exhibit No. 3, a
14 rights form. You have seen those before,
15 haven't you?

16 A. Yes, Sir.

17 Q. And you didn't give him the actual form or
18 have him sign the form out in Mahoning
19 County on Wirt Street because you didn't
20 have one, right?

21 A. Right.

22 Q. When you got back to the Sheriff's department,

1 and when you interrogate somebody or you
2 take someone to the Warren Police
3 Department and question them, the rights
4 forms are at least there, aren't they?

5 A. Yes, Sir.

6 Q. Why wasn't the rights form given to him or was
7 he advised of his rights?

8 A. Because I advised Detective Monroe prior to
9 the interview that I already advised him
10 of his rights at the scene on Wirt
11 Street.

12 Q. Officer Monroe just said, "Well, that is fine,
13 I'm not going to advise him of his rights
14 any more," or whatever, that was it?

15 A. Right.

16 Q. Is that your normal practice to verbally give
17 it, just go ahead and talk to someone
18 then get the written form of the rights?

19 A. Depends -- I can't speak for other
20 investigators. I wasn't the lead
21 detective here.

22 Q. Officer Monroe was the lead detective?

1 A. Yes, Sir.

2 Q. So, in essence though, when you went back in
3 to interrogate Mr. Jackson with Officer
4 Monroe, these forms were available before
5 you went to talk to him, right?

6 A. When?

7 Q. When you were talking to him at the Sheriff's
8 department?

9 A. Yes.

10 Q. He was taken out of the weight room and
11 brought to Officer Bacon's room, right?

12 A. Right.

13 Q. No question about it. Later on he's in that
14 room and he does sign a form?

15 A. Yes, Sir.

16 Q. The form was available an hour before?

17 A. Yes, Sir.

18 Q. But it was not given to him or acknowledged
19 supposedly, correct?

20 A. That is correct.

21 Q. Incidentally, the form, the form is to
22 acknowledge the rights given, correct?

1 A. Yes, Sir.

2 Q. And down below the waiver is down below
3 waiving your rights?

4 A. Yes, Sir.

5 Q. Did you have Mr. Jackson read that aloud?

6 A. No. The rights form was read and shown to him
7 by Detective Monroe and Nathaniel Jackson
8 stated that he understood it, signed it,
9 and I asked him at the end of the
10 signature, if he had any questions
11 regarding his rights and he said no.

12 Q. There's only room on the form for one
13 signature by the Defendant, correct?

14 A. Yes, Sir.

15 Q. So really when he signs it down there, it
16 means supposedly acknowledgment of
17 rights, but it also means waiver of
18 rights?

19 A. Yes, Sir.

20 Q. There isn't any way to sign just for
21 acknowledgment of rights and then leave
22 the bottom blank, right? There's no two

1 signature lines?

2 A. It is two separate sections of the Miranda.

3 If he didn't want to sign it and waive
4 his rights, then he didn't have to sign
5 it.

6 Q. The top part is the acknowledgment of rights.

7 Were his rights given to him? As a
8 Defendant, I can say, Officer, you gave
9 me my rights. I acknowledge my rights,
10 but I'm not going to waive my rights. So
11 you have a signature line up here that
12 was an acknowledgment, right?

13 A. The Miranda forms are all standard.

14 Q. When you talked to him originally with Officer
15 Monroe, we're in Officer Bacon's office,
16 right?

17 A. Yes, Sir.

18 Q. Are there tape recorders around the office?

19 A. I'm not sure. I don't know what Captain Bacon
20 contains in his office.

21 Q. So, the long and short is that what we have
22 are notes, we have cassette recorders

1 that are used. In fact, didn't you use
2 cassette recorders with Donna Roberts?
3 Were you around when the statement was
4 taken from Donna Roberts? Was that
5 recorded?

6 A. I wasn't a part of that interview.

7 Q. The long and short is, we're at the Sheriff's
8 office, you are going to go in and
9 interrogate Mr. Jackson. We have the
10 forms available, we have recorders, we
11 have even video equipment to begin with
12 or whatever and somehow, the conversation
13 takes place before that. Does that seem
14 odd to you?

15 A. No.

16 Q. When was it that you told him he was under
17 arrest for aggravated murder?

18 A. When I placed him in the rear of the police
19 vehicle in Youngstown.

20 Q. Do you ever mention on the video tape when you
21 are on the video tape that he's been
22 placed under arrest?

1 A. I don't believe so.

2 Q. Did you ever indicate on the video tape, where
3 we can hear it that he was under arrest
4 for aggravated murder?

5 A. I don't believe so.

6 Q. Was he given the warrant, the arrest warrant
7 for aggravated murder before he talked to
8 you when he was back at the station,
9 where the lead detective, Officer Monroe
10 was, who had the warrant? Was he served
11 with the warrant?

12 A. I don't know that.

13 Q. But you were there with Officer Monroe, right?

14 A. I wasn't together with him the whole time.

15 Q. So, you are thinking that maybe he was
16 actually served with the warrant by
17 Officer Monroe while you weren't looking,
18 when you weren't paying attention at the
19 Sheriff's office?

20 A. Possible.

21 Q. But we know that you didn't see the warrant or
22 serve it on Mr. Jackson, is that correct?

1 A. That is correct.

2 Q. What we have here is based on your notes,
3 which the original of the notes were
4 destroyed three weeks ago, and this is
5 supposed to be the compilation of them,
6 this State's Exhibit?

7 A. Yes, Sir.

8 Q. That would indicate that number one, that you
9 actually indicated to Mr. Jackson that he
10 was under arrest for aggravated murder,
11 is that correct?

12 A. Yes, Sir.

13 Q. We don't have anything on tape, on the video
14 and in written form or anything to
15 indicate that that would be the case, is
16 that correct?

17 A. Just my testimony.

18 Q. Number two, we don't have anything in written,
19 video or audio form to indicate that he
20 was given his rights in Youngstown on
21 Wirt Street in the police cruiser owned
22 by the Trumbull County Sheriff's

1 Department, only your testimony?

2 A. That is correct.

3 Q. And prior to talking to him in the Trumbull
4 County Sheriff's department, where the
5 forms were available, this is the first
6 conversation, the forms were available,
7 you did not have him read or sign or
8 waive his rights in regard to any
9 statements he would give prior to the
10 time you had the conversation with him at
11 the Sheriff's Department with Officer
12 Monroe?

13 A. That was, I advised Detective Monroe that I
14 advised him of his Miranda warnings and
15 he took over from there. I'm not aware
16 of any forms that were signed prior to
17 the video.

18 Q. Exactly. The only forms signed and the waiver
19 of rights is on the video?

20 A. Yes, Sir.

21 Q. And at time of the video, not prior to that
22 time?

1 A. Correct.

2 Q. Officer Hoolihan, there was in your notes an
3 indication that during that verbal
4 conversation you had with Mr. Jackson and
5 Mr. Monroe, Officer Monroe, that as he
6 tried to detail what happened at the
7 Fingerhut residence, the argument once it
8 got going, that Mr. Jackson evidently,
9 wanted to go back to Youngstown. In
10 other words, did he indicate to you,
11 which I think is in your notes, that he
12 was transported to the Fingerhut
13 residence by Mr. Fingerhut and that after
14 the argument got going, that he wanted
15 him to take him back to Youngstown. In
16 other words, he had no way to go back, is
17 that correct?

18 A. Yes, Sir.

19 Q. Let me ask you this. Is it a departmental
20 policy for the Warren Police Department
21 to do as you indicated what you talked
22 about before, when you took notes in

1 regard to this case, this is a homicide
2 case, this is a death penalty case,
3 right?

4 A. Yes, Sir.

5 Q. And is that a departmental policy where they
6 have you destroy notes or destroy
7 anything in regard to what you --

8 A. It wasn't destroyed. I would say threw them
9 away.

10 Q. Can we go get them now?

11 A. No.

12 Q. Are they destroyed then?

13 A. Yes.

14 Q. And this is what you say is the compilation,
15 word for word from your notes?

16 A. This here is the Exhibit No. 2, is the
17 supplement that Detective Monroe typed up
18 which is a fair and accurate conversation
19 between myself, Detective Monroe and
20 Nathaniel Jackson prior to the video.

21 Q. Let me ask you this. When did you see this
22 summary composed by Officer Monroe? When

1 did you first see that summary?

2 A. That was several weeks ago.

3 Q. This is April 17th, we'll go back three weeks,
4 put it in the last week of March, so we
5 have gone January, February, three and a
6 half months, and that is the first time
7 you see the summary of what supposedly
8 happened three and a half months ago at
9 the Sheriff's department?

10 A. That is not what I said.

11 Q. Go ahead.

12 A. What I'm saying is when Detective Monroe got
13 done with the summary, I reviewed it for
14 accuracy.

15 Q. When did you review it for accuracy?

16 A. Within a few days shortly after he was
17 finished typing it.

18 Q. Did you review it with your own notes?

19 A. I didn't take notes.

20 Q. You didn't take any notes at all?

21 A. No.

22 Q. So, Officer Monroe was the only one who took

1 notes during this conversation at the
2 Sheriff's department?

3 A. Yes, Sir.

4 Q. And you are indicating to me that that was
5 available to you, you saw that within a
6 couple of days after the incident?

7 A. No.

8 Q. Or after his arrest, or his interrogation, it
9 was on the 21st or whatever of December?

10 A. That is not what I'm saying.

11 Q. Help me out. When did you see the notes
12 compiled by Officer Monroe regarding the
13 conversation you had with Nathaniel
14 Jackson and Officer Monroe of the
15 Trumbull County Sheriff's Department?
16 When did you first see those notes?

17 A. It was a day or two after Detective Monroe
18 completed this summary. It was brought
19 to me.

20 Q. That is a day or two after he completed the
21 summary. I'm not worried about when he
22 completed it. When was the first time

1 you saw it in sequence of time going back
2 from December 21st to April 17th today,
3 when was that?

4 A. I don't know.

5 Q. Is it within three days of the 21st or was it
6 that time?

7 A. It is not dated on here when it was completed.

8 Q. What I'm asking you, do you have any idea,
9 ballpark, when you saw that? Was it just
10 a couple of weeks ago?

11 A. I would have to say from a guess,
12 approximately maybe a week to two weeks
13 after the incident.

14 Q. A week or two weeks after the incident. So he
15 had those notes compiled in that form and
16 you read that and you believe maybe two
17 or three weeks after the incident
18 happened at the latest?

19 A. Yes, Sir.

20 Q. We received that from the Prosecutor just two
21 weeks ago. And how was it that you got
22 together and went over the summary?

1 A. We sat down and we had a meeting at the
2 Howland Police Department and discussed
3 several issues and Detective Monroe
4 wanted me to read the interview.

5 Q. And you agree with what is in there?

6 A. Yes, Sir.

7 Q. And nobody suggested that you do the video
8 from the very beginning, correct, for an
9 interview?

10 A. No.

11 Q. When you are going to interrogate him for the
12 first time, nobody suggested you do it on
13 video, even though the room was there and
14 it was all set up in Officer Bacon's
15 office, right?

16 A. Right.

17 Q. Nobody suggested we're going to give him
18 rights, do it in written form, let's get
19 an audio cassette and record this?

20 A. No.

21 Q. Nobody suggested that?

22 A. No.

1 MR. LEWIS: Nothing further. Thank
2 you.

3 REDIRECT EXAMINATION BY MR. WATKINS:

4 Q. I understand that you took your notes and then
5 as the way you usually handle it, you
6 just --

7 MR. LEWIS: Officer Dillon is in the
8 Courtroom. We may end up calling him in regard to
9 this hearing.

10 MR. WATKINS: I'll be done. If you
11 want me to have him go outside, that is fine.

12 MR. LEWIS: I would rather have him
13 outside, yes.

14 Q. You went through Exhibit No. 3, which are your
15 typewritten notes, correct?

16 A. Yes, Sir.

17 Q. And it is a summary of what took place in the
18 vehicle with the Defendant when you first
19 saw him after his arrest?

20 A. Yes, Sir.

21 Q. And he was handcuffed?

22 A. Yes, Sir.

1 Q. And you testified that the FBI agents in this
2 case was on the bullhorn telling him to
3 come, he's wanted by authorities, is that
4 correct?

5 A. Yes, Sir.

6 Q. And you testified on direct and on cross that
7 you told him the reason for his arrest
8 was a charge of aggravated murder, is
9 that correct?

10 A. Yes, Sir.

11 Q. And you advised him of his rights including
12 the fact that anything you say could be
13 used against him, the right to counsel
14 and if he couldn't afford counsel, an
15 attorney would be appointed for him, is
16 that correct?

17 A. Yes, Sir.

18 Q. And he also asked you whether or not he could
19 have an attorney?

20 A. Yes, Sir.

21 Q. And you said at any time?

22 A. Yes, Sir.

1 Q. And then he started to tell you about, he was
2 on the phone with Donna?

3 A. Yes, Sir.

4 Q. Without referring to your notes, can you tell
5 the Judge in this case, how certain are
6 you that that happened that way?

7 A. 100 percent.

8 Q. And the notes that you prepared today, which
9 are typewritten from your handwritten
10 notes, how sure are you that they are
11 accurate as they were as you took them?

12 A. 100 percent.

13 Q. And by the way, you were writing down what he
14 was telling you and as you told the
15 Judge, it is just your word against his
16 in the sense that he's the only one that
17 is in that vehicle, correct?

18 A. Yes, Sir.

19 Q. And you are preparing and came to testify
20 under oath, "I did not kill anybody,
21 man," correct?

22 A. Yes, Sir.

1 Q. That written summary, he made no incriminating
2 remarks, correct?

3 A. Correct.

4 Q. And that is what you testified to Judge
5 Stuard?

6 A. Yes, Sir.

7 Q. And it was your word?

8 A. Yes, Sir.

9 Q. That Nathaniel Jackson, in that car
10 conversation said he didn't kill anybody?

11 A. Yes, Sir.

12 Q. Now at any time did you threaten, coerce,
13 promise Nathaniel Jackson anything?

14 A. No, Sir.

15 Q. You testified at all times he was cooperating?

16 A. Yes, Sir.

17 Q. Save and except for the answer that one can
18 interpret he had a conversation with you,
19 the tape speaks for itself, right?

20 A. Yes, Sir.

21 Q. Now, the other part that Attorney Lewis went
22 in with you was to point out for the

1 Court that when you went into that
2 initial conversation at the Trumbull
3 County Jail, in that room, to-wit the
4 room of Captain Bacon, it is you, Officer
5 Monroe and the Defendant, correct?
6 Nobody else in the world is there?

7 A. That is correct.

8 Q. And you do refer to this prior story on the
9 video tape, one or two occasions,
10 correct?

11 A. Yes, Sir.

12 Q. And he acknowledged that there was a prior
13 conversation, correct?

14 A. Yes, Sir.

15 Q. And that Exhibit, that contains what you on
16 your oath say is true, that was prepared
17 by Monroe and went over by you as a
18 summary of what he said, sometime after
19 11:45, correct, A.M. on that Friday?

20 A. Yes, Sir.

21 Q. Is that a summary of what he did and that
22 summary goes from going to the Greyhound

1 bus terminal, getting in the vehicle of
2 Robert Fingerhut, going to get marijuana,
3 coming to Warren, and how he was in a
4 situation where because of words by
5 Mr. Fingerhut that a gun was drawn on him
6 by Fingerhut and that he in fact was
7 shot, and then in this process of
8 self-defense, took the gun and killed
9 him, is that fair to state?

10 A. Yes, Sir.

11 Q. That is a summary of all of the facts that he
12 told you orally unrecorded, correct?

13 A. Yes, Sir.

14 Q. Then, and you are swearing those facts are
15 true?

16 A. Yes, Sir.

17 Q. Then you place him in a room which the Court
18 has just seen and it was on video,
19 including the rights form that was given
20 him, correct?

21 A. Yes, Sir.

22 Q. And he tells the same facts?

1 A. It is almost verbatim.

2 Q. Exhibit 2, Monroe gives you no more than what
3 is on the video tape?

4 A. Correct.

5 MR. WATKINS: Thank you.

6 RECROSS EXAMINATION BY MR. LEWIS:

7 Q. Did Mr. Jackson ever request to have an
8 attorney in regard to the little dilemma
9 he found himself in at any time? The
10 reason I note is in reference to your
11 notes, it indicates that he's asking does
12 he have a right to an attorney or
13 something to that effect. "Nathaniel
14 stated, I did not kill anybody, man, and
15 asked that he has the right to an
16 attorney at any time. I advised him,
17 yes, he does have the right to an
18 attorney." He was inquiring about the
19 right to an attorney to some extent?

20 A. He asked if he had the right to an attorney
21 and I told him, yes.

22 Q. When you talked to him originally over on Wirt

1 Street in Mahoning County, you made it a
2 point normally, instead of asking
3 questions you kind of told him how you
4 got there, right?

5 A. Yes, Sir.

6 Q. And the reason for that obviously, I would
7 think is by saying that Donna snitched
8 him out, whatever, is to loosen him up a
9 little bit and maybe he will tell a
10 story, is that fair to say?

11 A. It was based on the response of him. He's the
12 one that initiated the conversation about
13 being on the phone with Donna Roberts and
14 looking outside and seeing police cars.
15 I responded to his comment.

16 Q. And you could have said, "Well, Donna told us
17 you were at the Wirt Street address,"
18 right? Would that cover?

19 A. What I said is what is detailed in my notes.

20 Q. The notes go a little bit further. What they
21 say is, "She snitched you out. She's
22 down there and gave us a full statement,"

1 and all of that, "and it will be your
2 turn to get down to the station and be
3 able to tell your side of the story." It
4 was playing the bad guy after the bad
5 guy?

6 A. I was being honest with the man. That was a
7 fair and accurate statement.

8 Q. You did tell him?

9 A. Yes, Sir.

10 Q. Some of that motivation, that works pretty
11 well with multiple people involved in the
12 crime. The other guy snitched on you, it
13 is all your fault and that gets them
14 talking pretty quick?

15 A. It can be used as an investigative technique.

16 MR. LEWIS: Thank you.

17 MR. WATKINS: We would rest at this
18 point and thank the witness.

19 THE COURT: I thank the witness,
20 also.

21 MR. WATKINS: For purposes of the
22 suppression hearing, we proffer the State's

1 Exhibits.

2 THE COURT: Any objection?

3 MR. LEWIS: Yes. State's Exhibit
4 No. 1 is supposed to be a summary of the notes of
5 Officer Hoolihan, which I believe should not be
6 introduced only because of the original notes were
7 destroyed. He indicated that and we don't know if
8 that is a true and accurate recompilation of the
9 same thing. Number two, this compilation, even
10 though Officer Hoolihan indicated that to his
11 knowledge it is accurate, we haven't had the person
12 who did the compilation, Officer Monroe from the
13 Howland Police Department. So, I would say that
14 should not be introduced. That is our objection to
15 that. If he was able to do that, he would be able
16 to repeat it word for word, if he could remember it
17 that well. The rights form, that should not be
18 introduced as well. That was given after the fact.
19 These officers should have secured confirmation of
20 the fact they gave the rights to the Defendant.
21 They didn't do it by audio form, written form, any
22 form whatsoever, and in fact that second

1 conversation in the Trumbull County Jail, there
2 wasn't any indication that he was given his rights
3 again. The only indication we have is rights given
4 at the Mahoning County Wirt Street address in the
5 police cruiser and the video tape statement that
6 should be out for reasons stated he was not
7 properly given his rights, and there's no
8 indication in here that he actually understood his
9 rights in regard to these matters.

10 MR. WATKINS: I would respond that
11 the purpose of this hearing is to establish whether
12 or not the Defendant's Constitutional rights were
13 violated under the Fifth Amendment and the Miranda
14 decision and case law.

15 First, the summaries would not be
16 admissible at trial. It would be the testimony and
17 so what we're dealing with here, is the testimony
18 of this officer regarding what was said, and I
19 think the record is clear that he's 100 percent
20 certain this was told him, to-wit the conversation
21 in the vehicle and to-wit the two conversations in
22 jail. The one is clearly reproduced by the

1 video tape. And therefore, whether or not he's
2 testifying as to Monroe's summary, it is not as
3 important as the legal issues of whether or not
4 from the totality of the circumstances, these
5 witnesses, to-wit the police officers, obtained
6 voluntary statements that were not in violation of
7 any of the Constitutional rights of the Defendant
8 from the time of his arrest until the end of that
9 video tape. We feel that we have met the threshold
10 of proving our case, that the evidence shows that
11 these statements were obtained as voluntary
12 statements and in compliance with Miranda. At this
13 point in time, I think because this is a hearing
14 dealing with whether it is illegal conduct, I don't
15 think the admissibility of the statements are
16 important because that is a different legal issue
17 at trial because we're dealing with Constitutional
18 misconduct and we're not dealing with the
19 admissibility per se of for example the summaries.

20 THE COURT: Whether anything is
21 admitted for purposes of this hearing is actually
22 admissible at trial is a question for a later date.

1 MR. WATKINS: I further state, I
2 would request that if the legal issues that
3 Attorney Lewis has made, that both sides should
4 brief the law as to legal issues that he's arguing
5 and then we could, after submitting briefs, make an
6 argument on the briefs.

7 THE COURT: I'll of course allow an
8 opportunity for you to do that, but I think the
9 question is quite clear here as to what is proper.
10 First off, Miranda only says that a person upon
11 arrest before interrogation has to be informed of
12 the so-called Miranda rights. There's nothing that
13 I recall that requires that to be in writing. That
14 is, early on the police started to put it in
15 writing because it is always a question of did the
16 officer give them or not. From this hearing this
17 morning, I have unrebutted testimony from the
18 officer that he gave the rights. Nothing to
19 indicate that the officer is not telling the truth
20 or that he didn't give the Miranda warning upon
21 placing Defendant in the cruiser.

22 MR. LEWIS: Excuse me. We want to

1 put a witness on. This is not the end.

2 THE COURT: I'm just talking about
3 the Exhibits. This is just for purposes of this
4 motion. The question about the notes prepared, the
5 summary, the officer has testified that that is in
6 the usual course of business at the Warren Police
7 Department, and that the notes are not, the
8 generating notes are not usually kept, were not
9 kept here, and his testimony again is that he has
10 given a good compilation of that raw material by
11 way of his summary. The summary prepared by
12 Officer Monroe, granted the State has not presented
13 Sergeant Monroe to testify to that, but there was
14 testimony from Mr. Hoolihan that he had in fact
15 reviewed, and I assume was asked to do so to state
16 his opinion as to the correctness of them and he
17 seemed to indicate that in his opinion they were a
18 correct summation. So, for purposes of this
19 hearing, both, I'll let both State's Exhibits No. 1
20 and 2 in. The rights form is, was taken, was given
21 at the time of the video tape. He had numerous
22 cases where they have three or four different

1 rights forms given to a Defendant. I still say
2 that in my opinion, the initial verbal giving is
3 all that is necessary to comply with Miranda. So 3
4 and 4 will also be admitted at this point. The
5 State has rested.

6 MR. LEWIS: I would like to call
7 Officer Paul Monroe.

8 MR. WATKINS: Judge, there's five
9 Exhibits.

10 THE COURT: All five of the State's
11 Exhibits are admitted for this hearing and are for
12 the purpose of this hearing only.

13 DET. SGT. PAUL MONROE
14 being duly sworn according to law, on his oath,
15 testified as follows:

16 DIRECT EXAMINATION BY MR. LEWIS:

17 Q. Would you please state your name for the
18 record?

19 A. Paul Monroe.

20 Q. And Paul, what is your employment?

21 A. Detective Sergeant with the Howland Police
22 Department.

1 Q. And how long have you been -- or how long have
2 you been involved in law enforcement?

3 A. Seventeen years.

4 Q. How long have you been with the Howland Police
5 Department?

6 A. Seventeen years.

7 Q. And are you specifically in a detective
8 category now?

9 A. Yes.

10 Q. And how long have you been detective?

11 A. Approximately eight years.

12 Q. And calling your attention back to December of
13 2001, there was a homicide or what has
14 been labeled as a homicide in Howland
15 jurisdiction, correct?

16 A. Yes.

17 Q. And that was Robert Fingerhut?

18 A. Yes.

19 Q. And I assume you were involved from the very
20 moment that the phone call came through
21 to 911, correct, or shortly thereafter?

22 A. Shortly thereafter.

1 Q. You went to the scene, correct?

2 A. Yes.

3 Q. The coroner was notified, Mr. Germaniuk?

4 A. Yes.

5 Q. And you processed the scene?

6 A. I assisted.

7 Q. Helped to process the scene. Photographs were
8 taken, the house was later, with the
9 permission of Donna Roberts, supposedly
10 searched and other things were found and
11 potentially to be utilized as evidence in
12 this case, correct?

13 A. Yes.

14 Q. And calling your attention to the date of
15 close to December 21st -- I'm sorry, the
16 20th, December 20th. A Thursday, the
17 20th. Did you end up securing a warrant
18 from this Court in regard to the arrest
19 of this Defendant?

20 A. Yes, I did.

21 Q. And that arrest warrant was for what crime?

22 A. Aggravated murder.

1 Q. And did you personally take charge of the
2 warrants? Did you have it physically
3 with you?

4 A. Yes, I did.

5 Q. And on the 21st, there was an interview with
6 Donna Roberts, was there not?

7 A. No, the 20th.

8 Q. Okay the 20th. On the 20th. And as a result
9 of that particular conversation with her,
10 you were going to execute the warrant in
11 regard to Mr. Nathaniel Jackson, were you
12 not?

13 A. Yes.

14 Q. And she was going to facilitate that by -- and
15 she did by making a phone call to a Wirt
16 Street address over in Youngstown,
17 correct?

18 A. Yes.

19 Q. Did you go and assist in regard to the arrest
20 of Mr. Jackson over on Wirt Street?

21 A. No, I did not.

22 Q. To your knowledge, who went from the Trumbull

1 County task force? We have Officer
2 Hoolihan, obviously. Do you recall
3 anybody else that went?

4 A. Major Phillips, Captain Bacon. Several
5 members of the SWAT team. Detective
6 Yannucci, Detective Tackett, Detective
7 McBride.

8 Q. We have a group, the last four or five you
9 mentioned were all from the Sheriff's
10 department, right?

11 A. Yes, Sir.

12 Q. And Officer Hoolihan went as well?

13 A. Correct.

14 Q. He's from the Warren Police Department, and
15 did you go?

16 A. No, I did not.

17 Q. Is there any reason why you did not go?

18 A. Yes.

19 Q. What was that?

20 A. I stayed with Donna Roberts, Detective Dillon
21 and a female corrections officer from
22 Trumbull County Sheriff's office, and we

1 went to the Fingerhut residence and made
2 a controlled phone call to the Wirt
3 Street address.

4 Q. So, at the time that the SWAT team and the
5 other Sheriff's department personnel and
6 Officer Hoolihan were going to the Wirt
7 Street address, you were really at the
8 Fingerhut residence making this phone
9 call that would identify his location and
10 hopefully keep him on the phone while
11 they surrounded the house and ready to
12 take him into custody. That was the
13 plan?

14 A. Yes.

15 Q. And you had the warrant at that time for the
16 arrest of Mr. Nathaniel Jackson. What
17 happened to it?

18 A. I had the warrant.

19 Q. Did you give it to any of the officers who
20 were going to go and arrest Mr. Jackson?

21 A. I don't know.

22 Q. Where is the warrant to?

1 A. It was filed with the Clerk of Courts
2 downstairs.

3 Q. Did you ever serve the warrant on Mr. Jackson?

4 A. Yes, I did.

5 Q. And when did you serve the warrants on
6 Mr. Jackson?

7 A. During the interview that we conducted at the
8 Sheriff's department on the 21st.

9 Q. He returned, Nathaniel Jackson, along with
10 Officer Hoolihan to the Sheriff's
11 department and this is early morning
12 hours, was that correct, on the 21st?

13 A. On the 21st.

14 Q. And you were also present and Officer Bacon
15 came later, I think, a little time later?

16 A. I was present where?

17 Q. At the Sheriff's department.

18 A. Yes.

19 Q. That is the first time you saw Nathaniel
20 Jackson is when they brought him to the
21 Sheriff's department that night. I mean
22 in reference to this matter.

1 A. First time I personally seen him, yes.

2 Q. In reference to this matter?

3 A. Yes.

4 Q. And where was he placed when he arrived at the
5 Sheriff's department? You are the lead
6 detective on this case, are you not?

7 A. Yes, Sir.

8 Q. When I say lead detective, I don't know
9 whether that glorifies you or makes you
10 the poor goat for things. Are you the
11 guy that says, "This is what we're going
12 to do. This is how we're going to
13 proceed. This is our plan. I want three
14 officers over here, I want five officers
15 over here." Is that the idea, you are in
16 charge of the investigation, right?

17 A. Yes.

18 Q. So, you are basically the mastermind that
19 pulls it all together and gets the
20 information from different officers and
21 gives directions, right, you are smiling,
22 that is a good job?

1 A. Basically, I am responsible if something has
2 gone awry, I have to account for
3 anything.

4 Q. Well, you get the bad with the glory, too.
5 So, Mr. Jackson is brought back to the
6 Sheriff's department, Officer Hoolihan is
7 there, Officer Bacon is there, and tell
8 me what exactly happens when you first
9 see or talk to -- strike that. What does
10 Officer Hoolihan tell you when you get
11 back to the Sheriff's department that
12 night?

13 A. Initially, Hoolihan went to the booking area,
14 I am assuming this, he came back and
15 spoke with me. Nathaniel Jackson came
16 back, we were in the detective area. I
17 don't know how long they were in the
18 booking area of the Sheriff's department.
19 When they came into the Detective Bureau
20 where I was, there were no Sheriff's
21 deputies with us. We had no access to
22 their facilities other than the hallway

1 and the weight room. Detective Dillon
2 and I were there, we had been let in by
3 the Sheriff's department. We put Jackson
4 in the weight room. I was in there a
5 short time with Nathaniel Jackson, and
6 Detective Dillon, then Hoolihan and I
7 left the weight room and we discussed
8 what happened in Youngstown.

9 Q. Mr. Jackson is left in the weight room with
10 Officer Dillon?

11 A. Yes.

12 Q. From the Howland Police Department?

13 A. Yes, Sir.

14 Q. Then you conversed with Officer Hoolihan?

15 A. Correct.

16 Q. Was anybody else, did you converse with
17 Officer Bacon there? Were you talking
18 with more than Officer Hoolihan or just
19 Jeff?

20 A. Initially, it was just Hoolihan that came in.
21 We had to wait for Bacon to arrive and
22 they came in separate vehicles.

1 Q. From the Wirt Street address, because he was
2 out there, also?

3 A. Bacon?

4 Q. Yes.

5 A. Yes.

6 Q. He's the guy that had the magic keys that
7 opened the door in the Sheriff's
8 department?

9 A. Right.

10 Q. What did Officer Hoolihan tell you?

11 A. Hoolihan had told me that they had received
12 permission to search the residence from
13 Sheila Fields, who is not really known to
14 me at that time.

15 Q. This was over on Wirt Street?

16 A. Correct. He told me that they had arrested
17 Jackson without incident. He didn't put
18 up a struggle. He told me that he had
19 planted a seed in Jackson's head that
20 Donna Roberts had been cooperating with
21 us, and that he had made that known to
22 Jackson.

1 Q. Did he tell you anything else?

2 A. We discussed interviewing him, needing access
3 to the offices. Told me he had advised
4 him of his rights.

5 Q. Anything else?

6 A. Discussed his finger injury.

7 Q. That is it. Officer Bacon ended up coming
8 back obviously to the Sheriff's
9 department, right?

10 A. Yes, Sir.

11 Q. Once he was back, his office would be opened
12 up and you could interrogate or interview
13 Mr. Jackson, correct?

14 A. Yes.

15 Q. And prior to the interview, did you desire to
16 in any way give Mr. Jackson his rights or
17 get the written form out for his rights?

18 A. I did read him his rights.

19 Q. When did you read him his rights?

20 A. We had a -- first of all we had -- we talked,
21 we sat down, the three of us,
22 Mr. Jackson, Detective Hoolihan and

300

1 myself. At 1:45 I believe we began
2 speaking with Jackson. He told us he
3 made a statement to us as to what had
4 happened. He agreed to make a video
5 taped statement. At that time, we turned
6 the video camera, I readvised
7 Mr. Jackson --

8 Q. Actually, Mr. Hoolihan indicated that he had
9 given Mr. Jackson his rights, correct?

10 A. Yes, he did.

11 Q. But he didn't have any written form, what we
12 usually have here in regard to the rights
13 forms, right?

14 A. Correct.

15 Q. And you did decide though, you did want to
16 interrogate him and interview him in
17 regard to the homicide of Mr. Fingerhut,
18 right?

19 A. Yes.

20 Q. And we're at the police department, we're in
21 Officer Bacon's office, correct?

22 A. Yes.

1 Q. And later on, when you go to turn the video
2 tape on or video tape him, you have him
3 finally in written form, and even audio
4 form, video form, sign his rights, in
5 other words, acknowledgment of his
6 rights?

7 A. Yes.

8 Q. Is there any reason why you didn't have him,
9 since the form was available, an hour
10 later, why you didn't take the form in
11 with you and have him acknowledge the
12 rights before you interviewed him at the
13 Sheriff's department?

14 A. He had already been advised of his rights. It
15 is a procedure that we always follow when
16 we video tape a suspect, we always try to
17 put it on video. We read them their
18 rights again.

19 Q. But you didn't feel it was necessary to go in
20 and have them before you had the
21 conversation with him?

22 A. Hoolihan told me he had already advised him of

1 his rights.

2 Q. But you don't have anything in written form or
3 signed by Mr. Jackson, or to hear his
4 voice or to see his image, saying that he
5 waived his rights, just a matter of he
6 was given his rights and that is it,
7 correct?

8 A. Yes.

9 Q. So, the only formalistic proof we have of the
10 rights being given, him signing, that is
11 actually on the video tape?

12 A. I have Officer Hoolihan telling me.

13 Q. I understand. He said yes. He was under
14 oath. He said he gave his rights. I'm
15 saying we have something tangible. I
16 have got a form here and I can see
17 Nathaniel's signature, and on the video
18 tape I can hear somebody say, "You have
19 the right to remain silent." I'm saying
20 the previous rights, we don't have
21 anything, do we?

22 A. No, Sir.

1 Q. You and Officer Hoolihan went in Officer
2 Bacon's office and talked to Mr. Jackson
3 in regard to this, correct?

4 A. Yes.

5 Q. And as you indicated, Officer Hoolihan planted
6 the seed and indicated to Nathaniel that
7 the woman gave him up, basically, and
8 that is an investigative technique or
9 tactic or whatever, if somebody or more
10 than one person was involved in the
11 crime, it is always nice to say the other
12 guy squealed on you or giving it all up
13 and he's going to blame you. That kind
14 of loosens up the tongue?

15 A. That is what was done.

16 Q. You went in and you had the conversation with
17 Nathaniel and Nathaniel basically gave
18 what is contained in this summary, which
19 is Exhibit No. 2. Is that correct?

20 A. What is your question?

21 Q. Once you had the conversation with, in regard
22 to Mr. Jackson along with Mr. Hoolihan

1 there, this is a summary of what was said
2 and done in that interview room, that
3 contains a little bit more, but contains
4 that?

5 A. Yes.

6 Q. Can you tell me how that interview went with
7 Officer Hoolihan, Nathaniel over there
8 and yourself?

9 A. It was very informal. I was sitting behind a
10 desk, Hoolihan was sitting to my left and
11 Jackson was sitting on the other side of
12 us. We began talking about what
13 happened. There was no indication by
14 Jackson that he wasn't involved in this.
15 He basically told the story. He told his
16 side of the story as to what happened and
17 we told him that is what we're here to do
18 is to hear his side of the story and
19 document what he had to say.

20 Q. Document. That is a good use of the word.
21 There wasn't any compulsion at that point
22 to get the cassette recorder out and say,

1 "Nathaniel, we want to record this," or
2 "Nathaniel, let's turn that video on
3 right now and put it all on tape," or
4 anything?

5 A. We were going to do that. We did do that.

6 Q. I'm saying this is the initial interview.
7 This is the one where hopefully he would
8 spill his guts. You wanted evidence
9 here. You wanted a confession?

10 A. We wanted his side of the story.

11 Q. And Officer Hoolihan was to your left,
12 Nathaniel was over there. Who was doing
13 the questioning or was there any
14 questioning involved or what?

15 A. Both of us were asking questions.

16 Q. You both asked questions of Nathaniel. Was
17 Nathaniel cooperative?

18 A. Yes, he was.

19 Q. And did you record that conversation in any
20 form, manner or way at all?

21 A. With electronic equipment.

22 Q. We know electronics were involved.

- 1 A. It was written down.
- 2 Q. Notes?
- 3 A. Yes.
- 4 Q. You wrote notes. Do you know shorthand?
- 5 A. No, I do not.
- 6 Q. It has to be in long hand words, right?
- 7 A. Yes.
- 8 Q. Let me ask you this. Do you still have the
- 9 notes that -- this obviously, these
- 10 aren't the notes themselves, this is a
- 11 compilation?
- 12 A. This is a summation of my notes.
- 13 Q. Do you still have the notes?
- 14 A. No.
- 15 Q. Can you tell me what happened to the notes?
- 16 A. I compile a lot of notes through my
- 17 investigations. Once I type up my
- 18 report, I destroy them.
- 19 Q. You destroy them. Just out of curiosity, when
- 20 you make your notes out, do you do it in
- 21 sentence form as just appears here or do
- 22 you use the key words? In other words,

1 somebody uses instead of saying a whole
2 sentence, if I said, "I cross examined
3 Paul Monroe today in Judge Stuard's
4 Court," I would go, "Monroe cross
5 examined, Stuard," and that would tell me
6 the whole story.

7 A. Do I write down what I say and he says -- no.

8 Q. What I'm asking, your notes, is that exactly
9 what your notes had in them or did you
10 put them in sentence form?

11 A. Put them in sentence form.

12 Q. It is not an exact transcription of what is in
13 the notes. This is more elaborate?

14 A. It is more paraphrased.

15 Q. When did you compile this from your notes?

16 A. Approximately two days afterwards.

17 Q. When did you give that to the Prosecutor's
18 office, do you recall?

19 A. No, I don't.

20 Q. You don't have any idea when you gave it to
21 them?

22 A. No.

1 Q. Did you give that to him originally you think
2 in this case? It is an important thing.

3 A. As soon as it was prepared I gave it to them.

4 Q. As soon as it was prepared, you gave it to
5 them. I think you would. It is
6 important. This is where the guy talks
7 about how the homicide took place, I
8 think that is pretty important. So, you
9 are pretty sure, you are sure you gave
10 that right to them right after the
11 homicide?

12 A. This would have been Christmas weekend.

13 Q. It is after you took it from your notes,
14 compiled it, then you gave it to them?

15 A. Are you saying did I type it and then run down
16 to the Prosecutor's office to give it to
17 them?

18 Q. I don't want you running. It is dangerous, it
19 is Wintertime. The point is, did that
20 just get to the Prosecutor's office in
21 the last two weeks or was it in their
22 possession for a longer period of time?

1 A. Should have been in their possession a longer
2 period of time.

3 Q. So, we don't have the original notes, this is
4 the compilation and this is the best you
5 recall of what happened between Nathaniel
6 Jackson, yourself, and Officer Hoolihan,
7 right?

8 A. Yes.

9 Q. You could have just put the video on right
10 away, could you not, or asked him to do a
11 video, but you decided not do that?

12 A. Initially I didn't know whether Mr. Jackson
13 would want to go on video right away. We
14 were developing a rapport with him.

15 Q. Tell me about the rapport.

16 A. Mr. Jackson seemed to be somewhat despondent.
17 He didn't want to look at either of us.
18 He would frequently -- you and I were
19 talking right now. He would always look
20 away from me. He didn't want to talk
21 directly at me. Always looked the other
22 way.

1 Q. So, you had to develop some rapport with him?

2 A. He seemed to have been having some emotional
3 difficulties with the fact that he had
4 killed somebody.

5 Q. So you talked to him. Jeff could be a pretty
6 gentle guy and you can be a pretty gentle
7 guy with people?

8 A. I don't understand your question.

9 Q. You can talk to somebody in a very relaxed
10 form or whatever, and try to get their
11 attention, talk to them about what
12 happened, right?

13 A. Yes.

14 Q. And it is obvious from that summary, that is
15 what you did here, somewhere along the
16 line you got his confidence and you were
17 talking to him and he told you basically
18 what happened?

19 A. Correct.

20 Q. And is there anything else that you did or did
21 you give him anything during that
22 interview or on the video tape? Is there

1 anything else you can remember?

2 A. I don't understand what you are asking me for.

3 Q. What I'm asking you is this. Since you had
4 the warrant for his arrest for aggravated
5 murder, did you ever serve the warrant on
6 him?

7 A. Yes, I did.

8 Q. When did you serve the warrant on him?

9 A. I would have to look on the warrant to see
10 exactly what time it was served.

11 Q. Suffice to say, was it that night sometime?

12 A. Yes.

13 Q. Are you sure?

14 A. No, without looking at the warrant.

15 Q. On the video tape, since he was under arrest
16 for aggravated murder and this is not jay
17 walking, this is aggravated murder, there
18 isn't any reference in the video tape
19 that he's under arrest. Do you recall
20 anything in the video tape or anything on
21 the form saying, "You are under arrest"?

22 A. No.

1 Q. Is there anything in the video tape or on the
2 form saying, you know, "Nathaniel, you
3 are under arrest for aggravated murder"?
4 Is there anything in there to indicate
5 that?

6 A. On the video tape?

7 Q. Yes.

8 A. No.

9 Q. We don't have anything, as I go back to that
10 same old thing, we don't have any
11 documentation to say that he was ever
12 told he was under arrest for aggravated
13 murder other than the fact that he was
14 told that by Officer Hoolihan, and by
15 yourself or at least he was served. We
16 don't know if he was served after the
17 fact or before the fact of the video
18 tape, right?

19 A. Yes.

20 MR. LEWIS: Thank you.

21 MR. WATKINS: No questions.

22 EXAMINATION BY THE COURT:

1 Q. Sergeant, you say you don't remember when the
2 warrant was served. You recall about
3 being able to check on the warrant
4 itself?

5 A. On the warrant -- I filled out the warrant,
6 the return on the warrant, I made the
7 return myself to the Clerk of Courts.

8 Q. That return doesn't necessarily show the time
9 of day in which it was served, does it?
10 I'm trying to remember, do they?

11 A. I believe it does.

12 THE COURT: Anything further?

13 MR. LEWIS: What was that?

14 THE COURT: You asked the question
15 when it was served. I wanted a clarification for
16 my own.

17 MR. LEWIS: The warrant should be in
18 the file.

19 THE COURT: You have no questions?

20 MR. WATKINS: No.

21 THE COURT: You may step down.

22 Thank you.

1 (Court in recess at 2:30 p.m.)

2 (Resumed in Open Court at 2:35 p.m.)

3 MR. CONSOLDANE: At this time, we
4 would like to call Nathaniel Jackson only for the
5 purposes of this hearing and he does not waive his
6 Fifth Amendment right as far as the trial goes.

7 THE COURT: That is fine.

8 NATHANIEL JACKSON

9 being duly sworn according to law, on his oath,
10 testified as follows:

11 DIRECT EXAMINATION BY MR. CONSOLDANE:

12 Q. Nathaniel, would you state your name for the
13 record?

14 A. Nathaniel Jackson.

15 Q. And your address is Trumbull County jail at
16 this point, is it not?

17 A. Yes, Sir.

18 Q. I want to direct your attention back to the
19 night of December 21st. Do you remember
20 that night or that would have been the
21 night of December 20th and then after
22 midnight it would have been December

1 21st, the following day?

2 A. Yes, Sir.

3 Q. And it seems like from the testimony that
4 there was a whole group of police
5 officers that besieged your house that
6 night, is that correct?

7 A. I didn't know that they were outside the
8 house. I was in the house in the back
9 room, the telephone rang and they brought
10 me the telephone and I get on the phone
11 and it was Donna. At the same time I am
12 still in the back room, I am talking to
13 her on the telephone, and then all I hear
14 is them say, "Nathaniel Jackson, we got
15 the house surrounded, come on out." I
16 said, "I got to go. The police are out
17 here to get me." I hung up the phone and
18 when I came to the front, the other girls
19 that was in there, they kept on saying,
20 "What is going on?" I said, "They want
21 me." I said, "I'm going out, don't worry
22 about it." So, I come outside, did what

1 the officers told me to. I cooperated
2 with them. When we get outside, the
3 officer right there, handcuffed me and
4 put me in the back of the cruiser. As I
5 was in the back of the cruiser, I did not
6 want to say nothing.

7 Q. Did you ask him for a lawyer?

8 A. I asked him for an attorney. I said, "I want
9 to speak to an attorney." He said, "You
10 got your chance to put everything out in
11 the open." He said, "You know, Donna,
12 you know your partner snitched on you."
13 I said, "About what? I don't know what
14 you are here for. I don't know what you
15 are here for." I'm still in the back
16 seat of the car and he's lined up against
17 the door and he looked over at me and he
18 said, "Are you all right?" I said, "Man,
19 what is wrong with you? Why are you
20 asking me if I am all right?" And I
21 leaned back against the door again, then
22 he turned over and looked at me and said,

1 "Don't be nervous, it is going to be all
2 right." And I turned back around and
3 said, "What are you talking about?" I
4 asked him, I said, "What are you talking
5 about?" He kept telling me, "It is going
6 to be all right. Your partner snitched
7 you out." I said, "Snitched me out about
8 what?" As we get to Trumbull County
9 jail, they --

10 Q. I want to back up just a minute. Did he give
11 you the -- did he serve the warrant on
12 you -- when did he serve you the warrant?

13 A. I ain't seen no warrant until before they were
14 ready to process me.

15 Q. Do you know what time that was in the morning?

16 A. It was late. It was really late.

17 Q. Did they give you that warrant before they
18 video taped you?

19 A. No, they didn't give me no warrant.

20 Q. They didn't give you the warrant until after
21 they video taped you?

22 A. No, it was later.

1 Q. And did they tell you that you were under
2 arrest?

3 A. When he first handcuffed me, he did not tell
4 me nothing, but he kept looking at me
5 saying, "It is going to be all right."
6 And I said -- I said, "What is going to
7 be all right?" If he would have told me
8 that I am under arrest for aggravated
9 murder, then I could have understood.
10 Not one time did I tell him that I did
11 not kill anybody. I didn't want to speak
12 to this man because for one thing, I
13 know -- I knew already what they are
14 coming to get me for. I knew it. So
15 therefore, I didn't want to speak to them
16 unless I had an attorney around.

17 Q. And you told them that you wanted a lawyer?

18 A. I told him I wanted an attorney. The man that
19 just walked out of the Courtroom.

20 Q. And he still kept asking you questions?

21 A. He kept asking me questions. I said, "I don't
22 want to talk to nobody." He said, "Well,

1 this is a chance you can go ahead -- all
2 the weight is shifting down on you." I
3 said, "Shifting down on me for what?"

4 Q. When you got to the jail, you did sign a
5 waiver of your rights? Did you not sign
6 this?

7 A. Yes, I did sign that.

8 Q. And did anybody read your rights to you before
9 you signed that?

10 A. What?

11 Q. Did anybody give you your rights?

12 A. No.

13 Q. How about when you were in the car, did they
14 give you your rights in the car?

15 A. They did not give me nothing. All he was
16 trying to do was get some information out
17 of me.

18 Q. This was the first time that anybody told you
19 about your rights?

20 A. Right. When he brought me this paper. He set
21 this paper in front of me saying, "Well,
22 the questions I asked you, sign right

1 here and sign right here." That was it.
2 He did not tell me that you was under
3 arrest. All he was trying to do was get
4 some information out of me and I kept
5 telling him, even during the time, I
6 said -- I kept saying, "Well, I don't
7 want to speak no more." I said, "I told
8 you what I had to say. I want to talk to
9 my attorney. Anything else, you talk to
10 my attorney about it." And he kept on
11 trying to get further information out of
12 me saying, "Just tell us just one more
13 thing."

14 Q. How much time -- for how long did they do that
15 before you signed the rights waiver?

16 A. This was until it was about over. Until it
17 was about over, the video thing and
18 everything, and I put that on my right
19 hand. That is when he came and brought
20 me that paper and sit that paper in front
21 of me. I talked all the way throughout
22 the whole thing and then he throwed that

1 paper in front of me.

2 Q. This says it was 2:13 in the morning?

3 A. This was after they got through videoing me,
4 that is when it took place. I don't know
5 what time it was. That is when they put
6 that piece of paper in front of me,
7 telling me to sign right here. I didn't
8 know if it was signed before a waiver or
9 nothing. All he said was, "Sign right
10 here."

11 Q. How long did you stay in the weight room?

12 A. I didn't stay in the weight room that long.
13 They brought me in the weight room for a
14 little while. I stayed in the weight
15 room approximately about 10, 15 minutes.
16 Then they took me to the medical
17 department and housed me in the medical
18 department.

19 Q. How long did you stay in the medical
20 department?

21 A. I stayed in the medical department for
22 probably about a half hour.

1 Q. And then they brought you to the video?

2 A. Then they brought me around to the little
3 office room.

4 Q. Did they turn the video camera on right away
5 when were you taken in there?

6 A. No.

7 Q. They talked to you first?

8 A. Right.

9 Q. How long did they talk to you before they
10 turned the video camera on?

11 A. They talked to me for, I would say he talked
12 to me a good 15, 20 minutes, asked me did
13 I want anything and I kept telling him, I
14 said, "I would just like to speak to an
15 attorney."

16 Q. What did they say to you when you told them
17 that you wanted an attorney?

18 A. He said, "Look," he said, "This is the chance
19 to defend yourself." He kept telling me
20 all the weight is being shifted down on
21 you.

22 Q. What did he say about the lawyer?

1 A. All he kept on going around the lawyer part.

2 He kept on going around the lawyer part.

3 He wasn't really trying to hear the
4 lawyer part.

5 Q. Did he ignore you when you told him that you
6 wanted a lawyer? Did he ignore that
7 request?

8 A. He just came up with some more questions about
9 the case. Every time I would say, "I am
10 finished, I don't want to speak no more,
11 I don't want to speak no more." "Well,
12 Nathaniel," such and such, he just kept
13 wanting to put in more questions and I
14 told him, "I don't want to talk no more,
15 which I didn't."

16 Q. So, just one last thing. They didn't ever
17 tell you that you were being arrested for
18 murder until after the video tape was
19 over?

20 A. Until afterward. He did not one time tell me
21 that I am being arrested for murder,
22 because every time he kept looking over

1 at me, he kept saying, "It is going to be
2 all right. Are you nervous?" "Nervous
3 about what?" I kept telling him,
4 "Nervous about what?" Then I leaned back
5 over towards the door, because I took
6 some Victorines for the pain for my
7 finger and I had smoked a blunt earlier
8 and I was high. I am sitting in there,
9 I'm trying to just finish enjoying my
10 high. You already got me. I ain't got
11 nothing to say to you all, I want my
12 attorney.

13 MR. CONSOLDANE: Nothing further.

14 CROSS EXAMINATION BY MR. WATKINS:

15 Q. Mr. Jackson, I have a few questions, okay?

16 A. Yes, Sir.

17 Q. If you don't understand the question, just let
18 me know. Now, I understand that this
19 isn't the first time you have been
20 involved with being arrested, is that
21 fair to state?

22 A. Yes, Sir.

1 Q. Approximately how many times have you been
2 arrested?

3 A. I never tried to count.

4 Q. Fair to state it could be something like 15 or
5 20 times?

6 A. Possibly.

7 Q. And have you had the occasion to have to talk
8 to police officers like Hoolihan before?

9 A. No, I never talked to the police.

10 Q. Have you been arrested and been given your
11 Miranda warnings before?

12 A. Yes.

13 Q. You had been -- in fact, you were in prison on
14 receiving stolen property shortly before
15 this crime you have been charged with,
16 correct?

17 A. Yes.

18 Q. And you were in prison before for another
19 receiving stolen property, correct?

20 A. It was the same one. I just got out. The
21 Judge brought me back on judicial and
22 sent me to the halfway house and the

1 halfway house violated me and sent me
2 back down.

3 Q. You had an aggravated burglary conviction some
4 time ago, too, isn't that correct?

5 A. Yes.

6 Q. You went to prison for that?

7 A. Yes.

8 Q. And there were other times that you were
9 arrested for various theft offenses,
10 right?

11 A. Yes.

12 Q. And some of those times the police officers
13 would give you a Miranda warning?

14 A. Yes.

15 Q. So, you understood from your experience with
16 police, what a Miranda warning is, right?

17 A. Most definitely.

18 Q. Would you tell the Judge what Miranda means?

19 A. I guess it is right there.

20 Q. I mean in your own words, what rights do you
21 have when the police arrest you?

22 A. I am arrested. That is it. I am arrested.

1 Q. Do you have a right to an attorney?

2 A. I don't want to be hearing that. I don't want
3 to be hearing that. You are talking
4 about this paper.

5 Q. These other cases you had an attorney, right?

6 A. Right.

7 Q. You knew you had the right to an attorney with
8 your experience with the law, right, in
9 the Courts? You know about that?

10 A. I knew.

11 Q. You knew. And you understand, you knew you
12 didn't have to tell the cops anything,
13 right? You knew you had that right,
14 didn't you?

15 A. Right.

16 Q. And were there times when you were arrested,
17 isn't it true there's times you told the
18 police, "Get lost, I'm not going to talk
19 to you," right?

20 A. I was high, and I really at the time, I kept
21 telling them, I said, "I want to talk to
22 an attorney." I was off on pills,

1 because my finger was in pain and I had
2 smoked some marijuana earlier that day
3 and I was high. I'm figuring I'm just
4 cooperating with them, trying to go ahead
5 and stop asking me these questions.

6 Q. The times before when you were arrested, there
7 were times when you told the police, "I
8 don't want to talk to you," right? Isn't
9 that true?

10 A. I never been in a situation like this.

11 Q. You have never been arrested?

12 A. I ain't never been in a situation like this I
13 been arrested for. I mean I understood
14 it.

15 Q. But you were given Miranda warnings before,
16 correct, by other police departments,
17 correct? Am I correct?

18 A. I don't know what you mean by that.

19 Q. I'm asking you, on your prior arrest, were you
20 given Miranda warnings?

21 A. What is the Miranda warnings, Sir?

22 Q. What you just --

1 A. That piece of paper?

2 Q. Yes.

3 A. That piece of paper?

4 Q. How many times have you seen that piece of
5 paper before with other arrests?

6 A. One time.

7 Q. When was that?

8 A. That is on my aggravated burglary.

9 Q. And what did you do in that aggravated
10 burglary? Did you give a confession?

11 A. Yes, I gave a confession -- no, I didn't give
12 a confession.

13 Q. You said no, you didn't talk to them in that
14 aggravated burglary?

15 A. There was no need to give a confession.

16 Q. When you signed that warning in that
17 aggravated burglary, would you tell the
18 Court what you did. After you signed
19 that paper in that aggravated burglary,
20 what did you do? Did you give a
21 statement?

22 A. No. It was over.

1 Q. It was over?

2 A. Yes.

3 Q. Why was it over?

4 A. Because they gave me this to sign and that is
5 it.

6 Q. And you signed it?

7 A. Yes.

8 Q. And did you give a statement?

9 A. I don't know nothing about this. A statement
10 for what? There was no need for a
11 statement, if you get caught red handed.

12 Q. You said, "I'm not going to give a statement,"
13 in that case?

14 A. There was no need for a statement.

15 Q. You told the police, "I'm not going to give
16 you a statement"?

17 A. I didn't tell the police nothing. They didn't
18 ask me for no statement.

19 Q. Why did they give you Miranda?

20 A. Those people gave me this and told me, "Here,
21 sign this paper." That is all I know.
22 "Sign this paper." Okay, I signed the

1 paper.

2 Q. Now you are testifying that you had no idea
3 why you are being arrested when the
4 bullhorns came and they were telling you
5 to, "Nathaniel Jackson, come on out, we
6 got you surrounded." You had no idea?

7 A. Me?

8 Q. Yes, you.

9 A. I had an idea, but they didn't tell me that.

10 Q. You had an idea?

11 A. Right.

12 Q. What was your idea?

13 A. My idea?

14 Q. Yes.

15 A. I knew what happened. I knew what I did
16 wrong. That is why I don't understand
17 why that people put down on that paper
18 that I did not kill anybody, because I
19 didn't tell anybody that. I did not tell
20 that man that.

21 Q. Did you tell him you killed somebody then?

22 A. I didn't tell him nothing. I didn't want to

1 talk to him in the car.

2 Q. You are telling me that Hoolihan here, when he
3 told the Judge under oath that he never
4 told you you were under arrest for
5 aggravated murder?

6 A. He did not tell me I was under arrest for no
7 aggravated murder.

8 Q. Did he give you your Constitutional rights
9 when you were in that car, police
10 cruiser?

11 A. All that man tried to get was some
12 information.

13 Q. Did the man give you your Constitutional
14 rights?

15 A. No, Sir.

16 MR. LEWIS: He answered the
17 question.

18 THE COURT: It is a simple question
19 yes or no and he's evading the question.

20 MR. LEWIS: I think he's asked about
21 three or four times. Go ahead.

22 THE COURT: Overruled.

1 Q. So, it is your testimony when Hoolihan
2 testified that you were under arrest,
3 there's a warrant for aggravated murder,
4 that is not true?

5 A. That is not true.

6 Q. And when Hoolihan testified that you had a
7 right to an attorney, and you had a right
8 to an appointed attorney, if you couldn't
9 afford one, that is not true?

10 A. He did not tell me that. I asked for my own
11 attorney.

12 Q. Yes or no?

13 A. No.

14 Q. When Hoolihan testified that he told you you
15 had a right not to incriminate yourself,
16 you have a right against self
17 incrimination, was that true?

18 A. He didn't tell me that.

19 Q. That is not true?

20 A. I don't know nothing about any self
21 incrimination.

22 Q. What else was not true regarding what Hoolihan

1 testified to?

2 MR. CONSOLDANE: I'm going to object
3 to that question. That is way too broad.

4 THE COURT: Sustained.

5 Q. Hoolihan gave a summary of what happened in
6 the vehicle. You agree you were in the
7 vehicle with Hoolihan, correct?

8 A. Yes.

9 Q. Do you agree that you were there for some
10 period of time along with Hoolihan, is
11 that correct?

12 A. Yes.

13 Q. You agree that you came out of the house with
14 your hands up and walked out backwards?

15 A. Yes, Sir.

16 Q. And you agree that you had a bandage on your
17 finger?

18 A. Yes, Sir.

19 Q. And by the way, did you get any treatment for
20 that at the hospital?

21 A. Yes, Sir.

22 Q. You agree that you were in that car for a few

1 minutes?

2 A. I was in there until they came and transported
3 me.

4 Q. You agree that he mentioned that Donna Roberts
5 had put the finger on you and was
6 cooperating with police?

7 A. Yes.

8 Q. That's true?

9 A. Yes.

10 Q. He did tell you that?

11 A. Yes. He said that all the weight was being
12 shifted on me. I said, "I don't want to
13 talk." He said, "Well, this is your
14 chance, go ahead and defend yourself.
15 Everything is being shifted on you." I
16 mean what is being shifted on me? He
17 said, "You know what happened."

18 Q. Now, were you under the influence of drugs or
19 alcohol at that time?

20 A. I was Vicodined up. I had popped about eight
21 Vicodins and I smoked a half blunt.

22 Q. But you have a good memory of what happened?

1 A. At the time, I know what was going on.

2 Q. You had no problem, even at this point in
3 time, what happened back then, is that
4 correct?

5 A. I was high. I was high then.

6 Q. If you were high, is it possible that Hoolihan
7 was telling the truth, that he did give
8 you your rights and you might not
9 remember?

10 A. He did not give me no rights.

11 Q. Now, you ended up going to the Trumbull County
12 Sheriff's Department, correct?

13 A. Yes, Sir.

14 Q. And you end up with Hoolihan and with Monroe
15 and I think you fairly agree that you
16 were in the Trumbull County jail for a
17 short time, less than an hour, and you
18 were questioned by those two officers, is
19 that true?

20 A. Yes.

21 Q. And the story that you gave about the whole
22 story about going to the Greyhound

1 terminal, going and picking up Robert
2 Fingerhut, going and getting an ounce of
3 marijuana, how he gave you \$100 and how
4 you end up, you had a place to go, and
5 you were going to go along with him and
6 you went in his Chrysler and you end up
7 going to Howland and you knew Fonderlac
8 because had you been over Donna's house
9 before, right?

10 A. Right.

11 Q. And you went into the house, and then how he
12 talked to you, and talked down to you and
13 then you said you want to go back to the
14 hood, right?

15 A. Yes.

16 MR. CONSOLDANE: Is there a question
17 here?

18 MR. WATKINS: I think there's a
19 question.

20 MR. LEWIS: It is his rights. It is
21 not the story or anything else.

22 MR. WATKINS: He's saying that he's

1 not voluntarily cooperating.

2 MR. CONSOLDANE: He didn't say he
3 didn't cooperate. He said he asked for a lawyer
4 and they didn't give one.

5 THE COURT: He also says he doesn't
6 understand and he does understand. He has the
7 right to explore which is which.

8 Q. (By Mr. Watkins) You at that point in time,
9 are giving this story to the police, is
10 that correct? Yes or no?

11 A. Yes.

12 Q. And then after you give that story, they asked
13 you to go on video tape, is that correct?

14 A. Right.

15 Q. And you know for the world that it is on
16 video, correct?

17 A. Right.

18 Q. You saw the video here?

19 A. Right.

20 Q. I think you testified that you weren't given
21 your rights at the beginning of the
22 video, is that correct?

1 A. Right.

2 Q. And so you are stating that if the video shows
3 you receiving your Constitutional rights
4 at the beginning of the video, then that
5 video is not correct, is that what you
6 are saying?

7 A. I didn't receive none. I can't remember, I
8 was high.

9 Q. You distinctly remembered and told Judge
10 Stuard that you absolutely remember that
11 they didn't give you the -- that is
12 Hoolihan did not give you your
13 Constitutional rights an hour and a half
14 before in the car, so you should be less
15 on drugs now?

16 A. I know when they first picked me up, I know
17 about that.

18 Q. But now you are not so sure about what happens
19 at 2:00 or 1:45, an hour and 45 minutes
20 later, is that what you're saying?

21 A. The pills started kicking in.

22 Q. The pills started kicking in. Well, is it

1 fair to state that you saw the video, you
2 gave that same story on video tape that
3 you gave right before, correct?

4 A. I guess so.

5 Q. And is it also correct that at the end of that
6 video tape you said you didn't want to
7 talk any more and you were very firm
8 about it and you didn't talk any more, is
9 that fair to state?

10 A. I told him that from the beginning.

11 Q. At the beginning you were given your rights --

12 A. He kept on asking me questions to get stuff
13 out of me, to get stuff out of me.

14 Q. Mr. Jackson, isn't it true that you wanted to
15 give that story because that was the
16 story that you had in your mind and you
17 were given your Constitutional rights,
18 signed the waiver and gave that story and
19 you gave that because that is what you
20 wanted to do, and you certainly
21 understood your Constitutional rights?

22 A. I was trying to get away, man, so these people

1 can go ahead and just let me go ahead to
2 the lock up. It seemed like they ain't
3 going to go ahead and let me go without
4 saying something.

5 Q. You are not the type of person that would
6 stand up for yourself and say, "I'm not
7 talking"?

8 A. What can I do? If I got a police breathing
9 down my back, like I got to just tell
10 them something. What am I going to do?

11 Q. You thought they were breathing down your
12 back?

13 A. When I told them a couple of times that I
14 would like to talk to an attorney, and I
15 don't want to say nothing, even when I
16 was in the car and told him that, it
17 should have been left right there. It
18 seemed like they wanted to keep on and
19 keep on.

20 Q. And you keep on, keep on yourself?

21 A. I was under pressure. I couldn't take it.

22 Q. You felt that there was a lot of pressure

1 exerted by the police in that question
2 and answer type proceeding, is that what
3 you are saying?

4 A. Yes. I didn't want to talk to them. It was
5 like I had no choice.

6 Q. Basically it comes down to what you recall as
7 happening and what the police officers
8 recall what happened, right?

9 A. What did you say?

10 Q. The events of what happened, it is your memory
11 versus their memory, and you are saying
12 that initially you had a better memory
13 because the pills didn't kick in, is that
14 fair to state?

15 A. I didn't know what was going on.

16 Q. You didn't know what was going on? You know
17 what is going on today?

18 A. Yes. I'm functioning today.

19 MR. WATKINS: I have no other
20 questions.

21 MR. CONSOLDANE: Nothing further.

22 THE COURT: You may step down.

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1 Thank you.

2 MR. CONSOLDANE: We would rest at
3 this time.

4 THE COURT: You have no Exhibits, is
5 that correct?

6 MR. CONSOLDANE: No Exhibits.

7 THE COURT: Argument?

8 MR. WATKINS: I thought we were
9 going to agree to submit briefs.

10 MR. CONSOLDANE: I would and see if
11 I'm not correct on this, but I think we have got
12 two issues here. We've got whether or not the
13 video tape confession is admissible. I think that
14 is separate and with what is said in the car. We
15 have got two.

16 THE COURT: Everything prior to the
17 video and after the written, yes.

18 MR. WATKINS: I would like to get
19 their brief and then we'll --

20 MR. CONSOLDANE: We want yours
21 first.

22 MR. WATKINS: It's your burden of

1 proof.

2 MR. CONSOLDANE: The burden of proof
3 never shifts to us.

4 MR. WATKINS: The burden of going
5 forward.

6 MR. CONSOLDANE: We have gone
7 forward.

8 MR. WATKINS: You are the moving
9 party to have it suppressed. You want both in?
10 Whatever you want.

11 THE COURT: I would suggest, the
12 questions are very simple. You may wish to file a
13 reply to the other brief, but I think you can both
14 prepare your briefs on the question at the same
15 time.

16 MR. WATKINS: Two weeks.

17 MR. LEWIS: Make it three weeks.

18 THE COURT: That is fine. I thank
19 you all.

20 (End of Hearing at 3:05 p.m.)
21
22

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1 (Back on the record on Wednesday, April 17, 2001)

2 THE COURT: Do you waive presence of
3 the Defendant for purposes of this motion?

4 MR. LEWIS: Yes.

5 THE COURT: The Court has before it
6 a motion for an order to take handwriting samples
7 from Mr. Jackson. I understand there's an
8 objection that has been voiced by the defense. You
9 like to state that?

10 MR. CONSOLDANE: Looking at their
11 brief that they attached as Memorandum in support,
12 they don't have a case there that is under 20 years
13 old. This is old law. The law since then has
14 changed and they can't force us to give self
15 incrimination to give this type of evidence against
16 himself. These are just old cases that they are
17 citing and they shouldn't be -- they should be
18 chastised for citing such old cases.

19 THE COURT: One might argue that the
20 case law has so well established itself that no one
21 brings it up any more. We'll go from there.

22 MR. WATKINS: Your Honor, the

1 Seminole case I believe is U.S. vs. Mara, out of
2 U.S. Supreme Court dealing with two basic issues,
3 that handwriting like speech is repeatedly shown to
4 the public and there is no more expectation of
5 privacy, so there would be no Fourth Amendment
6 violation. And additionally the Gilbert vs.
7 California, U.S. Supreme Court says, "Compulsion of
8 handwriting exemplars is neither a search or
9 seizure subject to Fourth Amendment protections."
10 Taking the next step, the Ohio Supreme Court also
11 considered whether handwriting exemplars would
12 violate the Fifth Amendment, and State vs. Kiser,
13 U.S. Supreme Court said that a Trial Court may
14 order a Defendant to give handwriting exemplars,
15 and there's no Fifth Amendment protection. And in
16 fact, in State vs. Flinn, it would be punishable
17 by contempt not to give the exemplars and Hawk vs.
18 Superior Court was an interesting case where the
19 Defense attorneys were placed in jail for telling
20 their clients not to give exemplars.

21 THE COURT: Interesting case.

22 MR. CONSOLDANE: I would like to put

1 a comment on the record in this case to be sealed.
2 I would like to do it exparte, and it has to do
3 with -- well, one of the main defenses in this, and
4 it is in regards to this request.

5 THE COURT: This case or the motion
6 granted here, I made a statement before and I think
7 it is probably pretty much on the mark, and that is
8 that this case, the case law has been just for
9 years without exception on this point, that there's
10 no violation of a Fourth or Fifth Amendment right.
11 You might be hard pressed to find recent cases on
12 this point. Your point is preserved for the record
13 as to the objection, you may be able to convince
14 the Supreme Court at some point that this is not
15 the way that it is and should be. Under the Fourth
16 Amendment, this is not a seizure of papers or
17 property as contemplated by the Fourth Amendment,
18 and it has been constantly litigated that there's
19 no violation of the Fifth Amendment, but to cause a
20 person to testify against himself in one form or
21 another. They can hold you down, put your feet in
22 a plaster cast, they can take blood from you, they

1 can do a whole series of things, they just can't
2 beat you until you give a confession. That is what
3 the Fifth Amendment protects. That is the ruling.
4 I'll grant the right to take handwriting samples.

5 MR. CONSOLDANE: In regards to this,
6 can we clear the Courtroom? I would like to put
7 something on the record, exparte.

8 THE COURT: You can put anything on
9 the record that you wish and it is what you got the
10 Court of Appeals for.

11 MR. WATKINS: Is the Court going to
12 rule that this is to be exparte?

13 MR. CONSOLDANE: I'll give my reason
14 first before I do it and if you don't agree that it
15 should be, then I'll walk out.

16 THE COURT: He can put, as you can,
17 an exparte on the record for appeal purposes only,
18 nothing to do with the hearing of the trial.

19 MR. CONSOLDANE: We're in Court now,
20 there's no one in the Courtroom except for the
21 Court Reporter, my Judge and myself. One of the
22 theories that they are propounding right now is

1 that my client grabbed the back of the coat of
2 Mr. Fingerhut and shot the gun and it scraped his
3 back and penetrated his finger, rather than this
4 his being shot in the scuffle. What they don't
5 realize at this time is that Mr. Fingerhut is left
6 handed. So, he would have been holding the gun in
7 his left hand, which is an argument, but allowing
8 them to go over and take these writing samples,
9 they are going to learn really fast that he's left
10 handed and make up some other different theory for
11 what they have already propounded to me. I think
12 it is kind of unfair if you are going to order them
13 to give the handwriting exemplar, I would like to
14 have them do it through me, rather than having a
15 deputy go over and take it. I have done these
16 before for other experts. And then also, I guess
17 I'll --

18 THE COURT: The only way I can
19 handle that is to have him brought over, and I'm
20 going to have to have a deputy in the room.

21 MR. CONSOLDANE: I'm going to
22 Cleveland. I won't be back until Friday night, but

1 I can go over on Saturday or Monday, when I get
2 back. I can go over to the jail into the visiting
3 room.

4 THE COURT: We can do this. Have
5 your client come over with you in front of Mary Ann
6 and put it on the record that the Court is
7 observing the handwriting samples and there should
8 be no argument about that. Monday -- you tell
9 Dennis because he's going to be asking me
10 questions. You tell Dennis, Monday, that the Court
11 has indicated I would allow your request, that
12 rather than somebody over there getting the
13 handwriting samples that you would like to appear
14 in front of the reporter and put on record that
15 your client is giving handwriting samples, find out
16 what they want.

17 MR. CONSOLDANE: One final thing is
18 they did say they don't object to me getting the
19 expert. I think in the sake of time, I'll get a
20 motion and entry in there, but I want your approval
21 to go ahead and pursue one.

22 THE COURT: I would ask you not to

1 hire one until you are sure they are going to use
2 it. I suspect they are though, because they have
3 to prove those letters were written by him.

4 MR. CONSOLDANE: I might have said
5 that Fingerhut was left handed, but I meant that
6 Jackson was left handed.

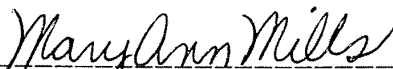
7 (End of proffer by Mr. Consoldane.)

8 (OFF THE RECORD)

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REPORTER'S CERTIFICATE

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the within hearing as shown by stenotype notes written by me in the presence of the witnesses at the time of the hearing.



MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio